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**FROM THE BEQUEST OF
CHARLES SUMNER**

CLASS OF 1830

SENATOR FROM MASSACHUSETTS

**FOR BOOKS RELATING TO
POLITICS AND FINE ARTS**

J. Lewis

THE
// LAWS, CUSTOMS, USAGES, //
AND
REGULATIONS

OF THE
'City and Port of London,'

WITH NOTES OF ALL THE CHARTERS, ORDINANCES,
STATUTES, AND CASES.

BY ALEXANDER PULLING, ESQ.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SECOND EDITION.

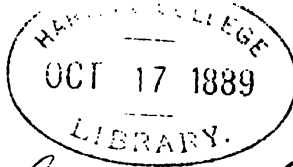
TO WHICH IS NOW ADDED
A SUMMARY OF THE COMMISSIONERS' REPORT
ON THE CORPORATION OF LONDON AND THE MUNICIPAL GOVERNMENT
OF THE METROPOLIS, 1854,
SHOWING
IN WHAT PARTICULARS THE LAWS AND CUSTOMS OF THE CITY
ARE PROPOSED TO BE ALTERED.

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"To treat of the great and notable franchises, liberties, and customs of the City of London, would require a whole volume of itself."—LORD COKE's 4th Inst. 250.

"There are many Acts of Parliament relating to the City of London and other places within the bills of mortality, which, being only local, are not within the compass of ordinary law books, and which would require a distinct volume of themselves; and it would be a work of service to the metropolis, if some person would complete a digest of all the laws relating to the Cities of London and Westminster and other places within the bills of mortality."—BURN'S JUSTICE, tit. London.

LONDON:
A. and G. A. SPOTTISWOODS,
New-street-Square.

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TO THE
RIGHT HONOURABLE THE LORD MAYOR,
THE
ALDERMEN AND COMMON COUNCIL,
OF THE
CITY OF LONDON,
This Treatise
IS,
BY PERMISSION, RESPECTFULLY INSCRIBED
BY
THEIR OBEDIENT SERVANT,
THE AUTHOR.

PREFACE.

(1854.)

THE subject treated of in this volume has, during the last twelve months, in a remarkable manner attracted the attention of the public. The fact that whilst twenty years have elapsed since the Municipal Corporations of this country were indiscriminately pronounced by public Commissioners, after a searching enquiry, to be *defective, and to require a thorough reform, to render them efficient instruments of local government*, the City of London continued unaffected by the general reform which followed, has sufficed alone to place the Corporate authorities of this ancient city, in rather an invidious light. It must be remembered that the Municipal Corporation Commissioners made a separate Report relative to the City of London in 1836, which has been already fully commented on by the author. In that Report great stress is made on the peculiar power of internal legislation possessed by the Corporation of London, a power which the reader will find very fully discussed in the present volume. (See pp. 43—50.)

The Municipal Corporation Commissioners, speaking of this peculiar power of self-reform, observed that with respect to many of the defects in the Corporation of London, the powers possessed by the Common Council enable the Corporation, if so disposed, to apply remedies to a great extent, without the assistance of the Legislature, and they significantly add: "We mention this, not with a view of entering into a discussion, which we consider not to be within the authority of our commission, as to the remedies

proper to be applied, but because the circumstance that the remedy is within the reach of the Corporation itself, gives a peculiar character to the continuance of the defect." There has no doubt been displayed on the part of the Common Council of London of late years a disposition to remedy abuses in the working of the civic institutions, and there are not wanting advocates of the old system, who reprobate any interference of Parliament with the affairs of this ancient corporation. A variety of circumstances have, however, recently drawn public attention to the fact that the municipal establishments of the City of London, have not been purified of their defects, and that a measure of reform, which the Common Council have, during twenty years, omitted to accomplish, ought now to be effected by a higher sanction. In the course of last year a Commission was appointed to enquire into *the existing state of the Corporation of the City of London, and its existing constitution, order, and government, rights, privileges, powers, and jurisdiction*; and a mass of evidence on the peculiar nature of those very ancient privileges and immunities, and their actual operation and practical value, has been elicited from witnesses peculiarly conversant with the subject, and expressly summoned to afford information.

The Commissioners have now published their "Report," and I have here attempted to give a review of its valuable but bulky contents. It will be seen that it is proposed to materially alter the present constitution of the Corporation of London, as regards the election and functions of the Lord Mayor, Aldermen, and Common Council, the admission to the freedom, and the right of election. The precise nature and effect of these alterations will be seen by comparing the extracts from the Report now given with the passages cited in the text of this work, many of which passages it will be seen are referred to by the Commissioners in their Report.

Some sweeping alterations are proposed with regard to the property and revenues of the Corporation which form the subject of the eighth chapter of this work, assimilating the management of the property of the City of London to that of towns included in the Municipal Corporations Act. The work of consolidation is to be applied to the offices and courts of this ancient city, which the reader must therefore consider with reference to the contents of my tenth and thirteenth chapters. The civic regulations as to trade, also, which form the subject of my twenty-second chapter, are to be, for the most part, done away with. It is proposed to give to each of the metropolitan boroughs a charter of incorporation, and the system of municipal government throughout the metropolis is to be rendered more perfect by the establishment of a single system of police, uniform qualifications for police magistrates, and one metropolitan board of public works. A large portion of the laws, customs, and usages of the city and port of London, it will be seen, still remain untouched by this Report, though the Commissioners recommend that the ancient customs and chartered privileges shall be revised and consolidated; and as all these subjects so immediately affecting the citizens and denizens of London have already been discussed in detail, in the text of this work, I am induced to believe that its republication, with the summary of the proposed changes, will at this moment be found of peculiar use, both in itself, and as an accompaniment to the Report of the Commissioners, when the reader seeks more minute information than that which the summary here given affords.

*Crown Office Row, Temple,
June 10th, 1854.*

PREFACE.

“To treat of the great and notable franchises, liberties and customs of the City of London,” observes the legal oracle quoted in the title page(a), “would require a whole volume of itself,”—a hint which, coming from so high a quarter, and considering the eagerness with which professional writers are always seeking out subjects for dissertation, would, it might be imagined, have been long ere this taken advantage of by some one more qualified for the task than the Author of the present treatise; but it is no less surprising than true, that, often as the customs and franchises of London have been made the subject of judicial investigation, extensive and important as the field of inquiry is, and numerous as the essays annually written upon general branches of law have been, there is no work at present to be found which even *professes* to give the information contained in the following pages.

There are several old books in existence, commencing with that written by Sir Henry Calthrope, Recorder of London in 1642, containing an abstract of the charters and decided cases upon the ancient City customs, and from these a number of modern publications have been copied, which, with perhaps the single exception of Bohun's “*Privilegia Londini*,” are remarkable only for

(a) Lord Coke's 4th Inst. 252.

their inaccuracies, and are for the most part of no practical use, either to the citizen or the lawyer.

The exclusive franchises of the municipal body, which form the most essential part of the subject treated of in these works, have many of them at this day yielded to the sweeping tide of reform. The trade and commerce of London, instead of being, as formerly, restricted to the admitted Freemen of the Guilds or Companies of retail dealers, is open to the competition of enterprise, industry and capital, collected from every part of the habitable world, whilst the improvements in our commercial system in other respects, have completely changed the ancient mode of transacting business. Many of the civic laws and customs are gone into disuse, or become merged in the more comprehensive provisions of general or local statutes. Commercial usage has established, in lieu of many of them, customs and regulations as binding and effectual as actual legislative provisions; and the ancient institutions themselves, little understood, and not altogether adapted in their present state to the modern wants of society, have sunk in a great degree into obscurity.

This result, however, though naturally following from the course of human improvement, is not without its disadvantages. New circumstances require new laws, and thus far the ancient regulations deservedly fall into disuse: but in the varied collection of law and custom of which the civic code is composed, there is much that is not only venerable for its antiquity, and from its connection with the ancient common law of the country (*b*); but much also that, properly modified, might be advantageously adapted to our present wants, and which it is the bounden duty of every citizen to make himself acquainted with. "The preservation of the ancient cus-

(*b*) See page 6.

toms," says Montesquieu (c), "is a very considerable point in respect to manners : as a corrupt people seldom perform any memorable actions, seldom establish societies, build cities or enact laws ; and, on the contrary, most institutions are derived from people of simple or severe morals ; so to recall men to the ancient maxims is generally recalling them to virtue :"—observations which are peculiarly applicable at the present moment. Legal reforms and alterations of all kinds are being continually proposed ; crowds of new schemes to rub off the unseemly defects of our institutions continually put forth, which are either not carried into effect at all, or are repealed almost as soon as they have passed into law ; but the most sound and lasting measures of reform are commonly those by which the ancient institutions themselves are restored. The local tribunals which formed so prominent a feature in the Saxon Code, carrying out the professed principle of bringing home justice to every man's own door, are, after being cast into the shade by the long established system of legal usurpation of the superior courts, again coming into fashion ; and their restoration, upon a nearly similar system to that anciently in force, is loudly called for. The system of registry and enrolment in the local courts anciently required for the validity of all important transactions, by which secrecy, the parent of fraud, was prevented, is also, in all probability, likely ere long to be revived ; and the trammels of legal verbiage introduced into our pleadings and formal instruments by the ingenuity of the Norman Lawyers, relics of a state of thralldom by no means gratifying to our national pride, are beginning, though slowly, to clear away in favour of the ancient simple style adopted by our Saxon ancestors ; and it is probable that in many other

(c) *Esp. de Loix*, lib. 5, ch. 7.

respects we may be made to feel the advantage of a return to ancient customs.

Under these circumstances, many of the ancient regulations and institutions of the City of London are deserving of serious regard, and of being recalled from the neglect into which they have fallen. The peculiar legal remedies afforded by the civic courts, such as that of sequestration and foreign attachment against the debtor's property, and those on the Equity side of the Mayor's Court in cases of orphans, and administration of freemen's estates, render their general adoption a matter of duty upon the part of the professional agent, and one which the Corporation would do well to encourage by removing the present restriction upon the number of practitioners. There still exists a most comprehensive system of civic control over the general trade of the metropolis, which, because the body of traders are too indolent to join in putting it in force, and because the city companies, chiefly absorbed in the management of their corporate funds, refuse to concur in this the original object of their institution, are at present of little or no practical use. There are laws, having the effect of communicating these advantages to every resident, by providing that every one who gets a livelihood within the walls shall be free of the city (*d*); but from the want of co-operation of the Mercantile Classes, (who are really the most interested in the matter, and who might, by means of the municipal government, obtain an influence exercised through well-chosen committees of their own body, inferior in use to no Chamber of Commerce in the world,) any participation in the management of Civic affairs is seldom an object of ambition among them : the duties of office are undertaken with

reluctance, and the requiring the freedom of the City to be taken up, is actually treated as a grievance.

This last misfortune is evidently the most certain cause of the supineness of the Corporation, who can never become really efficient guardians of trade unless they are well supported by their fellow citizens. "The Corporation of London," observed a celebrated living lawyer (e) from the judicial seat, "has generally set the example of a mild and regular government, cherishing the liberties, and protecting the interests of their fellow citizens;" and when it is considered to what a state of prosperity the British Metropolis has arrived under their auspices, with the aid of those free institutions to which it has ever been so indebted—how ancient these institutions are—how little, even with all their imperfections, they suffer in comparison with those of more modern manufacture—and how much their beneficial effects might be extended by the co-operation of the body of merchants as members of the civic constitution,—the revival of many of the ancient customs and institutions in their pristine vigour, and the extension rather than the restriction of their field of utility, cannot fail to be desired.

If the present work should have the effect only of causing the ancient laws and institutions of the City to be more justly appreciated, the author's labours cannot be considered to have been thrown away: the design of the work is, however, by no means *confined* to a mere description of the *ancient* laws, but the author has, on the contrary, endeavoured to blend with the latter so much of the more modern regulations and commercial usages of the City, as to make the work practically useful, embracing as little as possible the subject of general law,

(e) Lord Brougham, in case of *Attorney-General v. Haberdashers' Company*, 1 Mylne & Keen, 425.

which can be found so much better laid down in other works, but omitting nothing which in the author's estimation could render his work of use as a book of reference for the lawyer or man of business, or, indeed, for any inhabitant of London.

It is plain that such a wide and varied field of matter could not have been attempted without great assistance from others; and it is peculiarly gratifying to the author to acknowledge that in all the leading departments of trade—at the civic and public offices—from members of his own profession, and generally from all to whom he has applied for assistance, every facility has been afforded him for obtaining the most authentic information. Whilst this is yet going through the press, death has removed one of these, whose assistance was invaluable in such an undertaking—the late lamented Town Clerk, Mr. Woodthorpe, who, patient under all his sufferings, was ever ready to contribute to others from his very ample fund of information. The previous labours of this respected officer, however, in furtherance of the object of the Parliamentary Commissioners, appointed to inquire into the subject of the Civic Corporation, and the result of which is preserved in their Report, have, in a great degree, obviated the necessity of much further research in that quarter on the author's part, upon the present occasion. It would be wrong also not to mention, in conjunction with the Parliamentary Report, the learned dissertation of Mr. Norton on the City Charters, and numerous other historical and legal works which are referred to in the course of the following pages; and, indeed, had the former been of a more practical nature than it really is, the present publication would never have appeared.

In conclusion, the author has merely to state, that as his work was undertaken with no other object than to

supply information which he had often himself experienced the want of in the study and practice of his own profession, he will feel obliged by any observations which may be made on it, whether by way of criticism or otherwise, and however communicated; and in case a second edition should at any future time be called for, the author trusts he may meet with the same obliging assistance from public and private quarters which has been afforded him on the present occasion; for as accurate information on the subject of commercial usages can never be acquired except from private sources, and the want of such information is so constantly felt, both in commercial and legal transactions, any attempt to supply the defect is justly entitled to support.

A good Index is often one of the most valuable portions of a work, and for a book of reference like the present it is peculiarly desirable, and the author has, therefore, attempted to supply that desideratum; but it has been also deemed advisable to prefix, not only an ordinary Table of Contents, but Tables of Decided Cases, and of the Charters and Statutes which have been cited, with a short statement of the point to which each of them refers. To these are added—Lists of the Abbreviations made use of, and of the other authorities which are referred to in the course of the work; and the reader will thus be enabled to arrive at once at the point which he wishes to discover, and refer also to the proper quarter for further information.

Temple,
5th April, 1842.

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INTRODUCTION.

THE distinction between general laws and those applicable only to a particular district or class is observed not only in our own code, but also in the Roman law, and probably in most other systems of civil jurisprudence.

Independently of those principles received into our common law from the peculiar system of local and municipal government recognized by the Imperial Code, which there is reason to believe was at one time in full force in this island (*a*), and existed in a modified form, both during the time of the Saxons, and subsequently under the feudal sovereigns—our Civil Code recognizes various species of local and peculiar laws for the regulation and internal government of cities, towns, parishes and districts, or of particular classes of traders or other persons.

These local or peculiar laws consist, 1st. Of ancient customs, privileges and franchises sanctioned by immemorial usage, royal charters, and acts of parliament: 2d. Local and peculiar statutes, having for their especial object the government and regulation of a particular district: 3d. By-laws enacted by the inhabitants themselves, or those to whom the local authority for the time being is

(*a*) See *Duck de usu et auctoritate Juris Romani*. At the time of the abandonment of this island, by the Romans, in 409, it seems to have been divided into 33 *civitates*, or independent Republics, of which thirty were in England and Wales. Gibbon's Decl. and Fall of the Roman Empire, ch. 31. Each of these *civitates*, as in all other provinces of

the Empire, formed a legal corporation for the purpose of regulating their domestic policy; and the powers of internal government were distributed among annual magistrates, a select senate and the assembly of the people according to the original model of the Roman constitution. *Maffei Verona Illustrata*, part 1, l. 5, pp. 83. 106.

delegated : And lastly, such modern usages and regulations as have imperceptibly become established in particular districts, or among particular classes for general convenience in relation to trade or other purposes.

Customs.—The obligation of a custom or usage voluntarily adopted among a particular class, or in a particular district, is obviously founded on principles of natural justice (*b*) ; but to render such a usage or custom binding, it must not, except in the cases we shall presently describe, be directly opposed to the general law (*c*) ; it must be uniformly acted upon, and be compulsory on those who use it—be certain in its terms—reasonable in its operation, and not accompanied with any public inconvenience. A *custom*, in the strict sense of the term, has only a *local* operation, rights or franchises which are peculiar to the person or to a class of persons being ordinarily the subject of prescription (*d*) ; but ancient privileges peculiar to the person of citizens of London and to certain other classes are allowed to be set up by way of custom, and partake of the character of customs in every respect (*e*) ; and the modern usages of trade and commerce in force among particular classes of traders are of course not necessarily confined to any particular place.

In the proof both of prescriptive as well as customary rights, it was formerly necessary to establish their existence from time immemorial, which the law defines to mean the time of the coronation of Richard I. (*f*). This

(*b*) Just. Inst. 1, 2, 9 ; Vinn, 24, 25 ; Taylor's Civil Law, 246, 7 ; Noy's Max. 18.

(*c*) An exception to the rule that a custom must be consistent with the general law occurs with regard to *local* customs existing from time immemorial. Co. Litt. 33 b. The ancient customs of the City of London and other cities and places being expressly confirmed by statute.—Mag. Charta, Rot. Parl. 1 Ric. II. c. 11 ; 1 Edw. III. st. 2, c. 9 ; 14 Edw. III.

st. 1, c. 1 ; and 1 Hen. IV. c. 1.

(*d*) Co. Litt. 113 b ; 6 Co. 60 ; 8 Co. 62 ; 2 Bulst. 206 ; Roll. Rep. 46 ; 1 T. R. 167.

(*e*) *Rutter v. Rutter*, 1 Vern. 180 ; *Cholmely v. Cholmely*, 2 Vern. 82 ; and they can therefore be set up against the general law or even an Act of Parliament. Palm. 542.

(*f*) 3 Sept. 1189 ; Stat. Westm. 1, c. 38 ; Co. Litt. 113 ; Bac. Abr. Customs A.

rule in the proof of *prescriptive* rights is altered by the late statute of 2 & 3 W. IV. c. 71 (g), but in pleading an *ancient custom*, it is still necessary to allege its existence from time immemorial (h); but in practice, if the existence of a custom at a distant time be shown, and there is no direct evidence that at any certain time it did not exist, it is usually inferred that it has existed from time immemorial (i).

Customs of London.—The ancient customs of the city of London; different from all other customs (k), are declared never to become obsolete by misuse (l); and being expressly confirmed by act of parliament (m), they are considered incapable of being repealed except by express parliamentary enactment (n). They are proved in case of dispute in the peculiar manner which we shall presently describe, and being entered of *record* in the court

(g) By which it is enacted that no claim at common law by custom, prescription, or grant, to any right of common or other profit *à prendre*, shall be defeated after 30 years' enjoyment, by merely showing its commencement; or after 60 years' enjoyment in any mode whatever, except by proof of an express consent or agreement. 2 & 3 W. 4, c. 71, s. 1. The limitation in claims of right of way or other easement being reduced under the same circumstances respectively to 20 years and 40 years, and to the use of light to 20 years.

(h) *Tempore cuius contrarium vel fuerunt habere*, Eld. 237; Keb. 836; but it is said that in a *Declaration* this is not necessary, the plaintiff being here permitted to declare generally on his possession: but in a plea, the defendant is bound to set forth a legal title, *per* Kenyon, C. J. in *Grimstead v. Mariowe*, 4 T. R. 718.

(i) *Leach v. Cooper*, 7 M. & W. 126; and an uncontradicted usage of 20 years is sufficient evidence for this purpose, *Res v. Jolliffe*, 2 B. & C. 54; 3 D. & R. 240; *S. C. Jenkins v. Harvey*, 1 C. M. & R. 877.

(k) 11 Mod. 160; Fitz. 243.

(l) 4th city charter of Edw. III. Rot. Parl. 1 Ric. 2, n. 52, 126; 7 Ric. 2, No. 37.

(m) *Sup. note* (c).

(n) 19 Hen. VI. 646; 2 Balst. 188; City of London's case, 8 Co. 126; 2 Inst. 20; Plowd. Com. 36; Palmer, 542; Cro. Car. 347; 1 Roll Rep. 105: as a general rule, one custom cannot be pleaded or set up against another, *Bland v. Moseley*, 9 Co. 58 b, unless they are mere qualifications of one another. *Kinchin v. Knight*, 1 W. Bl. 49. The custom of London, however, is said to control that of Yerk. *Cholmsey v. Cholmsey*, 2 Vern. 48, 82.

where the matter is heard, they are ever afterwards judicially taken notice of there as established laws (o).

By a charter of Edward IV. (p) it is declared to be "the ancient custom of the city of London, that the mayor and aldermen for the time being ought to *record all their ancient customs by word of mouth* (q) as often as anything should be moved in act or question before any judges or justices touching their customs; and in order to enlarge rather than diminish such customs, it was granted that whenever any issue should be taken on any plea of or upon the *custom* of London between any parties in pleading (even though the city were parties themselves), or of any thing in plea, act, and question touching the said customs, be moved or happen in any court, the mayor and aldermen for the time being should record, testify, and declare whether such be a custom or not by the *Recorder* for the time being by word of mouth, and that

(o) 1 Mod. 212; *Blacquiere v. Hawkins*, 1 Dougl. 378, 380; And. 304.

(p) Dated 9th Nov. A.R. 2.

(q) This custom, which is recognized in previous charters, was evidently derived from the ancient institutions of our unlettered northern ancestors, in whose simple times every legal form and act was done and pronounced in the presence of true and steadfast witnesses, and lived only in their memory; when, therefore, a question arose as to the existence of any law or custom, competent witnesses were called to *record* or declare the same by word of mouth, according to what had been previously decided upon the same point, Ducange in voce *Recordum* and *Turba*; Robertson, Charles V., note 25, sect. 1; Dupin, Hist. de Droit Française, § 31; and hence the origin of the office of *Recorder*,

Ed. Rev. Vol. 34, p. 190; Norton's Com. Lib. 2, c. 35. In the celebrated ancient compilation, entitled the "*Assizes de Jerusalem* or *Jus Consuetudinarium Orientale*," of the date of 1099, the functions of the *Recorders* are described, and the suitor is advised in order to preserve the *record* of the decision of his rights to assemble in court as many of his friends as he possibly could, and he was to pray them to be attentive to the words spoken in the pleadings, "to hear well and to recollect well, in order to be able to *record* the plea when need shall require." So in Normandy a judgment pronounced by the king sitting as Duke of Normandy, was recorded by his testimony added to that of one witness, or the Royal Judge might substitute three other witnesses in his stead. Vid. Grand Cust. de Normandie, c. 10, 3, 4, 7.

there may be speedy process by that *record*, certificate and declaration, such custom so alleged shall be allowed for a custom or not, without the verdict of a jury, or further process."

This mode of proving the ancient city customs is now always judicially recognized in the superior courts (*r*). In actions where any such custom is set up, it is specially pleaded, and the above peculiar mode of trial must be surmised in the pleadings (*s*). The other side may then deny the existence of the custom, and such traverse or denial must conclude not in the usual way *to the country*, but with a *verification* (*t*), and thereupon a writ of *certiorari* (*u*) is issued, directed to the mayor and aldermen

(*r*) Year Book, 21 Edw. IV. 74, 76; 22 Edw. IV. 30; Co. Litt. 74; 2 Inst. 126; 2 Roll. Abr. 579; Cro. Car. 516; *Player v. Hutchins*, O. Brid. Com. Dig. *Exoins*, D.

(*s*) 5 Edw. IV. 30. The following form of suggestion on the roll was adopted in a very recent case:—

"And hereupon it is suggested and manifestly appears to the court, that there is and immemorially has been in the said city of London, a certain custom, used and approved of, that when any issue in any court of our Lady the Queen, or her predecessors, is or has been joined therein as aforesaid, upon any custom of the said city used and had, the mayor and aldermen of the said city have from time immemorial certified and informed the said court and the judges thereof, and ought from time immemorial, and still ought, so to certify and inform the said court and the judges thereof of the said custom, and of and concerning the same, by the learned recorder of the said city, *verbally*: and the plaintiff prays a writ of our Lady the Queen to be directed to the mayor

and aldermen of the said city, commanding them to certify to and inform the justices of H. M. of the bench here, in manner aforesaid, whether there is, and immemorially has been, in the said city, *such custom as the defendant has above alleged*: and because the defendant does not deny this, therefore the said writ is granted to the plaintiff, returnable at Westminster, on the 15th day of April next. The same day is given to the parties aforesaid at the same place." *Crosby v. Hetherington*, 5 Scott N. R. 654.

(*t*) *Leathersellers Co. v. Beacon*, Sir T. Jones, 149.

(*u*) The form of this writ in the above case of *Crosby v. Hetherington*, was as follows:—

"Victoria, D. G. of the U. K. of G. B. and I. Reg. Fid. Def., to the mayor and aldermen of the city of London, greeting: Whereas a certain action on promises is now pending in our Court of Common Pleas at Westminster, before our justices there, between Walter Crosby the plaintiff, and Wilson Hetherington the defendant, for the non-performance

to certify it, returnable in the next term, when the recorder appears at the bar of the court where the cause is pending; and the return of the writ being regularly moved for, formally reads the same to the court with the return or certificate (*x*) endorsed, and afterwards hands in the same, in order that it may be entered of record (*y*); and the validity both of the return and of the custom is afterwards discussed and determined by the court (*z*), or, if necessary, a new return is directed (*a*).

of certain promises by the said W. C., alleged to have been made by the said W. H., in which said action a certain issue hath arisen and is joined between the said parties, as we are informed, whether there is and immemorially has been in the said city of London, a certain custom therein, that is to say, that, &c. (in the language of the pleadings in the cause). And because it pertaineth to you by the recorder of the said city, according to the custom of the said city from time immemorial, used and approved of therein, to try the truth of the aforesaid issue so joined between the said W. C. and W. H., and to certify the aforesaid custom by word of mouth and not otherwise, we command you that you certify and make known in manner aforesaid, to our justices of the bench at Westminster, on the 15th day of April next, whether there is and immemorially has been in the said city of London, such custom as in the said issue is stated, or not; and have there this writ. Witness, Sir N. C. Tindal, Knt. at Westminster, the 31st day of January, 1843." See also Rastell's *Entries, Customary*, 3, fol. 143, ed. 1652; Townsend's *Judgments*, fol. 152.

(*x*) In this form:—

"The answer of John Humphrey,

Esq., mayor, and of the aldermen of the said city:—

"We, the said mayor and aldermen of the said city, by the Honble. C. E. Law, recorder of the said city, by word of mouth of the said recorder, according to the custom of the said city, do, in obedience to the said annexed writ, humbly certify that in the said city of London there is not now, nor has there immemorially been, in the said city of London, such custom as in the said issue is stated." *Crosby v. Hetherington*, *ub. sup.*

(*y*) *Plummer v. Bentham*, 1 Burr. 248. As the recorder certifies the custom *ore tenus*, he does not sign it. *Lewin v. Lewin*, 3 P. Wms. 17. It is essentially the return of the mayor and aldermen, who sign it separately (see *Crosby v. Hetherington*, *ub. sup.*), and not of the recorder; and the action for a false return lies against the former only. *Day v. Savage*, Hob. 87. The recorder appears at the bar in a peculiar robe of purple cloth, faced with black velvet; see *Plummer v. Bentham*, and *Crosby v. Hetherington*, *ub. sup.*

(*z*) 1 Mod. 212.

(*a*) *Hall v. Lumley*, cited 2 Ves. Sen. 592. This, it is presumed, would be necessary, in case the cus-

When any particular custom of London appears to have been once properly certified and declared valid, the

tom were to be altered by an act of common council, notwithstanding the doctrine laid down in *Blacquiere v. Hawkins*, 1 Dougl. 379, that a custom of London cannot be certified twice.

The return must expressly admit or deny the existence of the custom, and conform with the rules laid down for the validity of ordinary returns to writs of *mandamus*, &c., for which see Bac. Abr. *Mandamus*, I. The corporation cannot, therefore, send their books, &c. for the inspection of the court, and leave the custom to be determined there from precedents and cases. *Anon. Meas.* 7. The civic authorities must themselves determine the custom, on the same evidence adopted in courts of law, such as common reputation and the declarations of deceased persons. *Davies v. Morgan*, 1 Cramp. & J. 593; *Brett v. Beales*, M. & Malk. 416; Phillips & Amos on Ev., Vol. I. p. 250, *et seq.*; Entries in the Public Books of the Corporation, &c.; Vin. Abr. Ev. A. b. 15; *Reay v. Mothersell*, 1 Str. 93; *Marriage v. Lawrence*, 3 B. & Ald. 142. In *Crosby v. Hetherington*, cited above, the recorder required the point he was to certify to be previously argued by counsel in the court of aldermen.

The ancient books of the city of London contain a very great variety of legal and general information on the subject of the corporation, its customs and institutions, and other matters of importance; but these are still as they seem formerly to have been—stationally concealed from the public eye; see preface to Strype's *Stow*, ed. 1720, and the present standing orders of the court of

common council.

The earliest of these books is the *Liber de Antiquis Legibus*, containing chronological entries of charters and memorable proceedings connected with the city, commencing in 1188, before the time of legal memory; and appears to have been compiled by the town-clerks, living in the reigns of Henry III. and Edward I. A full account of this book will be found in the Report of the Record Commissioners, published in 1837. The next in point of date are the *Letter Books*, designated by the letters of the alphabet, going from A progressively, and containing entries of the proceedings in the city courts, royal mandates, and public statutes, &c., from 4 Edw. I. (1275) to 1417. After which, come the *Journals*, commencing 1417, and ending 1494, containing the proceedings both of the court of aldermen and court of common council (which entries extend over the first 9 vols. and part of the tenth); and subsequently to 1494 the entries are confined to the proceedings of the court of common council, the proceedings of the court of aldermen being entered in the *Repertories*, which are continued regularly to the present time—the entries up to 1547 being in Latin, and subsequently in English. The by-laws of the city or acts of common council, up to the end of the reign of Elizabeth, are also entered in a book called *Liber Legum*.

Besides these, there are *Liber Horne*, by the author of the *Mirror of Justice*, *Liber Dunthorne*, *Liber Albue*, *Liber Clerkenwell*, *Liber Custumel*, *Liber Ordinationum*, &c., which

courts will ever after consider the same as settled law (*b*), but until the custom has been duly certified as above, it cannot be judicially noticed (*c*); and if a custom of London not already certified be set up in a cause, and the mode of trial be not surmised in the pleadings, it will be tried, as in other cases, by a jury (*d*); and this is

seem to be compilations, made at different times by officers of the corporation, and from which the various earlier printed works, on the subject of the civic franchises, appear to be derived; see note to Sir O. Bridgman's Reports. In the title-page of a book called "City Law," in the Inner Temple Library, is the following note, supposed to have been written by Sir Martin Wright: "Engliahed out of an ancient French MSS. called *Dunthorne*, in which the customs are registered. It was allowed to prove a custom. Skin. 649; Comb. 383." In the last case quoted, however, the authority relied on is expressly stated to be *Liber Albus*.

(*b*) For they have then become matters of record, which are always judicially recognized. Mod. 212; *Blacquiere v. Hawkins*, 1 Dougl. 378, 380; And. 304; 1 Roll. Rep. 105. So the law takes notice of the customs of Gavelkind and Borough English. Co. Litt. 175 b; and generally all customs appearing upon record; Noy's Max. 18.

(*c*) Roll. Rep. 106; Co. Ent. 139 b.; *Hartop v. Hoare*, Wils. 8; 2 Str. 1187; 1 Wms. Saund. 142 a, 66, note 1.

(*d*) Bro. Trial, 96, citing 5 Edw. IV. 30; 2 Roll. Abr. 579; Bac. Abr. Trial, C. This is an exception to the rule laid down as to trial by certificate, which is usually said to be, when competent, the only legitimate form; and that the issue cannot, in

such case, be tried by a jury; see Stephen on Pleading, p. 113, ed. 4.

The customs of London are often brought before the courts above, on the return to a *habeas corpus*, and their merits discussed in the first instance, in order that it may appear whether the inferior courts have not the sole cognizance of the subject-matter of complaint; and this practice is also peculiar to the city of London. *Ballard v. Bennet*, 2 Burr. 777-9, S. C.; *Rex v. Worcester*, 2 Ken. 472; *Rex v. Glamorganshire*, 1 Lord Raym. 581; *Shaw v. Poyn-ter*, 4 Nev. & M. 290; *London v. Wood*, 12 Mod. 689; Tidd Pr. 399, 411, 412.

They may be also tried on the return to a *mandamus*; and this is generally the case in questions relating to civic offices, &c. See *Rex v. Mayor of London*, 3 B. & Ald. 255; 1 Nev. & M. 126; 6 Nev. & M. 870; 1 M'Lean & Rob. 1.

In any form in which a custom of London is brought before the courts above, its existence may always be tried by a jury, either in an action for a false return to a *habeas corpus* or *certiorari*, or on an issue arising out of a *mandamus*. *Scales v. Key*, 3 P. & D. 505.

In the city local courts, the customs and by-laws of the city are always judicially noticed as a part of the *lex loci*, and no certificate is consequently necessary; which doctrine prevails also in cases of writs

necessary in order to admit of proving in the ordinary way the existence of customs within the city, which, though *ancient*, form no part of the municipal system of local law, and which, consequently, the corporation are not competent to certify, such as customs relating to the clergy and parochial matters (*e*). The usages prevailing among a particular class of commercial men (*f*), and ancient rights and privileges, which, though usually pleaded by way of custom, are yet rather in the nature of a prescription (*g*), such as the privilege of a citizen of London to be exempt from toll (*h*), the right of the corporation to fines, forfeitures, tolls, &c. (*i*).

Charters.—Charters, or letters patent from the crown, have the effect of conferring such franchises, and making such regulations for the local government of cities, towns, and other districts, as the constitution entrusts to the sole discretion of the sovereign to grant. Powers, therefore, arising out of every branch of the royal prerogative, which the crown is not prevented by law from delegating, may be, and have been at various times, conferred by royal charters, which, in the instance of the city of London, settle the mode of election of several of the municipal functionaries, and the constitution of the various

of error from those courts. *Blacquiére v. Hawkins, ub. sup.* Salk. 269; 1 Chitty, 223; but in such cases the record is proved in the same manner as a custom by the recorder *ore tenus*. Bro. Error, p. 18; 34 Hen. VI. 42; Vin. Abr. Trial, G; and the same practice prevails on a plea of *nisi tunc record*, in the superior courts, to a judgment or other record of the city courts. Bro. Record, pl. 7; Vin. Abr. Trial, E; and the mayor and aldermen have by ancient custom a right to demand 40 days to prepare their certificate of the record. Vin. Abr. Trial, H; see 34 Hen. VI. 42 b., where 40 days were given to certify a record out of St. Martin's, and the re-

cord was at length certified *ore tenus*.

(*e*) See *post*, p. 264.

(*f*) See *Leuchart v. Cooper*, 5 Bingh. N. C. 99; and *post*, p. 428.

(*g*) See *ante*, p. 2.

(*h*) *Mayor of Lynn v. Mayor of London*, 1 H. Bl. 206; 4 T. R. 130; 1 Bos. & P. 487.

(*i*) *Smith v. Hancock*, Vin. Abr. Trial, H.; Moor, 129; *Day v. Savage*, Hob. 85; 2 Roll. Abr. 579, pl. 2; 581, pl. 3; *Cocksedge v. Fanshawe*, 1 Dougl. 119. Customs of this latter class the corporation are obviously incompetent to certify, being themselves personally interested in the result, 1 Bl. Com. 76, notwithstanding their charter (quoted *ante*, p. 4).

civic gilds or companies, regulate the proceedings of the local courts, and confer on the corporation the power of administering justice, and the privileges of having markets and collecting tolls, fines, forfeitures, &c., and sometimes assume to confirm the ancient customs, which it is evidently out of the province of a charter to do (*k*). Several of what are usually called the city charters have the form and effect of acts of parliament, and all of them are, in general terms, confirmed by other statutes. These charters are very voluminous, commencing in the time of Edward the Confessor, and their contents will be seen in their proper places. The trading companies also, as we shall see, have charters of their own, by which their powers over their members and the trades to which they relate are regulated and defined.

Local Statutes.—Hardly any scheme of local government, or local improvement, is at this day carried into effect without a direct resort in the first instance to the legislature, instead of relying either upon ancient customs or royal charters; and the local statutes, which for this reason are annually called into existence, far exceed any other class of local laws or regulations. The local statutes at present in force in the city and the rest of the metropolis for the regulation of the various departments of police, local government, the sewers, buildings, docks, prisons, support of the poor, lighting, paving, and cleansing, supply of water, &c., amount to upwards of 500.

By-laws.—By-laws have for their object for the most part

(*k*) *Player v. Hutchins*, O. Bridgman, 280. All franchises are legally presumed to be derived from the crown. Co. Litt. 114; Com. Dig. Franchises (A 2); Noy's Max. 48. Strictly speaking, a charter of confirmation was only required for those franchises which were claimed under charters granted before the time of memory, and not for those which were claimed by custom or prescription. 9 Co. 28 a.; Kit. 30; Com.

Dig. Franchises (A c). In practice, however, the justices in *eyre* used to require all claims of franchise to be brought before them and allowed in *eyre*. 2 Inst. 281; 1 Roll. 112; 2 Roll. 200 b, 40, 45; 201, l. 5, 10; 4 Inst. 185; 9 Co. 28 a; and this was repeatedly made the subject of complaint and redress, both by charter and statute. See stat. of Quo *warr.* 18 Edw. 1.; 1st charter of Edward III. to the city of London.

the practically carrying into effect the charters, or local statutes, by which the class or district to be governed by them are constituted. They must, therefore, comply in every respect with the general law, emanate from competent authority, and have for their object the well-being of the class or district to which they relate. When made under a charter or act of parliament, the latter, usually in express terms, defines the mode of making them, but in other cases they derive their force and effect from that general power which the common law confers on all communities to regulate their own internal affairs. The corporation of London, the various civic guilds or companies, and the various communities and local boards established by charter or act of parliament within the metropolis, have, therefore, all of them by-laws of their own, which constitute a part of the local regulations treated of in these pages.

Commercial Usages, &c.—The remaining class of local and peculiar regulations, which do not come within either of the above, are the usages of trade, commerce, &c., voluntarily adopted among particular bodies of traders, whether known only in practice by persons of the particular trade amongst whom they prevail, or reduced into writing for greater precision, and publicly made known to the world, as the regulations of the Stock Exchange, &c.

These various species of local laws, as they affect the government and regulation of the metropolis and its inhabitants, and the various institutions established therein, or the trade and commerce of the city, will be all noticed in their proper places, in connexion with that particular subject to which they more immediately relate, and it will be unnecessary to dwell any longer upon them here.

The present system of local and municipal government in London, it cannot be denied, is in a most unsatisfactory state. The suburbs of most important cities and towns, it has been remarked, have commonly extended themselves beyond the limits of the corporate

authority ; and this has been so much the case in London, that that portion, which is still designated as the " City," or the space included within the walls and the immediate suburbs, called the *liberties*, embrace less than one ninth of the population of the whole metropolis. The authorities of the ancient *civitates*, or free cities, seem to have enjoyed a territorial jurisdiction over a given district around their walls (*l*) ; and some of the charters of the city of London profess to confer on the corporation a somewhat similar authority over the suburbs (*m*) ; but this authority, in progress of time, evidently sank into disuse, as distinct local regulations gradually became necessary for the new districts raised into existence around the city.

It was at one time found necessary absolutely to prohibit new buildings in the neighbourhood of London ; but this prohibition was, for obvious reasons, evaded, and since that time various districts around the original city have become subject to distinct systems of local government, from the time of Elizabeth, when Westminster was first governed by a local act of parliament (*n*), to the present day, when, as we have before observed, there are upwards of 500 local statutes for the regulation of the various departments of municipal government and police in the metropolis, dividing among innumerable isolated local boards of commissioners the control and management of affairs, which can never be efficiently carried out, except with the co-operation of the whole metropolitan authorities.

(*l*) Gibbon, ch. 31 ; Robertson's Charles V. note 15, sec. 1, p. 38.

(*m*) Henry I. granted to the city the whole county of Middlesex to farm, with liberty to place whom they would of themselves as sheriff, the ancient duties of which office carried with them the custody, keeping, command, and government of the whole county. Dalton on Sheriffs, 5 ; Co. Litt. 168 ; Pref. to 9 Co. 53. The same object was aimed at in the

statutes and charters conferring on the corporation the conservancy of the Thames and the government of Southwark ; and the control of the civic authorities over the trade of the whole metropolis was further ensured by the charters of the companies, whose powers were extended over a circuit of seven miles and upwards around the city. See *post*, ch. 31.

(*n*) 4 Inst. 255, continued by 16 Car. I. c. 4.

Some of these departments of local government, it is true, have, of late years, attracted the attention of the legislature, and that very important one, the regulation of the police force, placed under a uniform system; and the alterations in the parochial system, under the Poor Law Act, in some degree remedied another inconvenience arising out of these multifarious local regulations. And long before either of these changes, an extensive reform in the sewers and paving regulations was attempted by passing one general act for the whole metropolis (*o*); but it requires no great discernment to perceive that a judicious consolidation of nearly all the local statutes and regulations in force in the metropolis, would secure to this great city the blessings of a wholesome, uniform, and cheap system of self-government, without interfering with any existing vested rights, or depriving any person, or class of persons, of their legitimate authority or control.

CHAPTER I.

THE MUNICIPAL CONSTITUTION OF THE CITY OF LONDON.

UNLIKE other municipalities, the city of London has not at this day any governing charter in the usual sense of the term, or any comprehensive charter by which the elections, powers, and functions of the ruling bodies and principal functionaries are regulated or defined (*a*). The greater part of the royal charters are confined to the sanction of its *ancient* institutions, the origin of which is traced back by legal antiquaries to the system of municipal government recognized by the imperial law (*b*); and

(*a*) 57 Geo. III. c. 29, commonly called M. A. Taylor's Act.

(*a*) 2 Rep. M. C. p. 5; Kyd on Corp. Vol. 1, p. 65, London being ex-

cepted out of the 5 & 6 Will. IV. c. 76.

(*b*) On the accession of a new territory to the Roman empire, it was either reduced to a direct sub-

this want of a governing charter was one of the chief pretences for the celebrated proceeding by *quo warranto*, in the time of Charles II. (c), under which it was attempted to disfranchise the city of its municipal privileges, and on which proceeding it is well known a judgment of forfeiture was pronounced and subsequently reversed by act of parliament, by which it is declared, "that the mayor, commonalty and citizens of the city of London shall for ever hereafter remain, continue and be, and prescribe to be, a body politic, *in re, facto, et nomine*, by the name of 'Mayor and Commonalty and Citizens of London,' and by that name, and all and every other name and names of incorporation, by which they at any time before the said judgment were incorporated, to sue, plead and be impleaded, without any seizure or *forejudger* of their franchises, liberties, and privileges upon pretence of any for-

jection, under the name of a *Præfectura* governed by Roman officers, or formed into a *colony* of Roman citizens, subject to the imperial laws, or constituted a *municipium* in which the ancient inhabitants filled all the civil offices (*munia capere*), and enjoyed their own ancient laws, Hein. Antiq. Rom. Jur. Synt. Lib. 1, Appendix, c. 5; and see a very interesting account of this system in Savigny's *Geschichte des Römischen Rechts*, translated by Cathcart, 8vo. Edin. 1829, and Gibbon's *Decl. and Fall of the Roman Empire*, ch. 31. London seems to have, at different times, undergone each of these various gradations of prefecture colony and municipium. Tacit. Ann. lib. 14, s. 32; Spence's *Northern Laws*, p. 3, quoting Camden; Whitaker's *Manchester*, lib. 1, c. 3; Cod. Theod. xi. 7.

Fitzstephen, who wrote in the time of Henry II., makes the city of London more ancient even than Rome, using the same laws and mu-

nicipal institutions, like the imperial city, being distinct from the provinces, having annual consuls, senators, and inferior magistrates, courts peculiar to itself, and comitia or assemblies of the people on stated days. Fitzstephen's *Description of London*, printed in the *Antiquarian Repertory*, Vol. 1, p. 246, and Strype's *Stow*, Appendix, ch. 2, and copied in MSS. in Bibl. Cott. Vespasian, c. 14, and quoted by Lord Coke, 4 Inst. 248.

It has been questioned whether the rank of a *free city* which London maintained after the Roman abdication was not even observed in the time of the Saxon heptarchy, to none of the kingdoms of which this city is said to have belonged, but presumed rather to have formed a sort of tributary state of itself under the supreme Lord or *Suzerain*. See Palgrave's *Hist. of the Anglo Saxons*, and Bed. Eccl. Hist. 16.

(c) *Rex v. City of London*, Mich. 33 Car. II.; 2 Show. 262; and reported separately, fol. 1696.

feiture, or misdemeanour, heretofore or hereafter to be done, committed or suffered: and shall have and enjoy all their rights, gifts, charters, grants, liberties, privileges, franchises, customs, usages, constitutions, prescriptions, immunities, markets, duties, tolls, lands, tements, estates and hereditaments whatsoever, which they lawfully had at the time of the recording or giving of the said judgment" (d).

Previous statutes had in general terms confirmed the customs and franchises of the city (e), and they cannot therefore, as we have seen, be repealed by any less autho-

(d) Stat. 2 W. & M. sess. 1, cap. 8. The corporation of the city of London, notwithstanding this statute, may, like any other corporation, be dissolved by act of parliament, the death of all persons who are free of the city, or by surrender of the civic franchises into the hands of the crown. 1 Bl. Com. 485. As a corporation, however, cannot in general dissolve itself, or do any act which must necessarily lead to a forfeiture, *Kirk v. Nowell*, 1 T. R. 118, and the total extinction of the order of freemen is an event in the highest degree improbable; the civic corporation may henceforward be considered free from any danger of dissolution or forfeiture, except under the express provisions of an act of parliament, though it would appear that particular franchises, such as the election of sheriffs, would be forfeited by non-compliance with the terms of the charters by which they are conferred, per Holt, Ch. J., in *City of London v. Vamacre*, 1 Lord Raym. 499; see Cro. Eliz. 499.

It was determined in *Sir John Smith's* case, that the judgment of forfeiture mentioned above did not, *de facto*, dissolve the corporation of London, as the terms of that judgment were, "that the liberty franchise

and privilege of the city of London, being a body politic, should be seized," *secus* if the words had been, "*of being a body politic*," &c.; for as Lord Holt said, "a corporation may subsist after its franchises are taken away, these not being essential to it, but only a privilege appertaining thereto; and the essence of a corporation was to make by-laws and govern their members, which a corporation might do, though their franchises were seized." 4 Mod. 52; Skin. 310; Carth. 217; 1 Show. 263.

A corporation may also, in general, be dissolved by the extinction of one of its integral branches. 1 Roll. Abr. 514; Kyd on Corp. Vol. 2, p. 448. The changeable nature of the civic constitution, however, which, as we shall see, the corporation themselves have the power at any time to remodel, is sufficient, independent of the above statute, to obviate this, even if the very improbable case should arise, of the extinction of either of the branches of the civic constitution, such as the livery, who constitute the common hall.

(e) Magna Charta, c. 9; 14 Edw. III. st. 1, c. 1; Rot. Parl. 1 Ric. II. No. 11; 7 Ric. II. No. 37.

rity than an express parliamentary enactment (*f*) ; and in fact it is very rarely the case that provisions affecting the customs or government of the city of London are introduced into public general statutes, the civic franchises being expressly or tacitly reserved, and separate legislative provisions adopted wherever it is intended to affect them (*g*). It is even laid down generally in the books, that if a town be incorporated by royal charter with the privilege of having such liberties as London, it will be good, for it sufficiently appears what liberties London has (*h*).

For these reasons, it is usual for the city to plead their franchises not as founded on royal grants, but as existing from time immemorial, viz. (*i*) " that the city of London is, and from time whereof the memory of man runneth not to the contrary (*k*) hath been, an *ancient* city (*l*), and that the citizens and freemen of the said city during all that time have been a body corporate and politic, in deed,

(*f*) *Ante*, p. 3 ; *City of London's* Case, 8 Co. 126 ; 2 Inst. 20 ; Plowd. Com. 36 ; Palmer, 542 ; Cro. Car. 347 ; 1 Roll. Rep. 105.

(*g*) See stat. 9 Hen. III. c. 9, relating to trade ; 13 Hen. VIII. c. 8 ; 12 Car. II. c. 24, s. 10, to orphans ; 22 & 23 Car. II. c. 10, § 4 ; and 1 Jac. II. c. 17, s. 8, as to customary distribution ; 3 Geo. III. c. 15, s. 8, as to parliamentary elections ; 5 & 6 Will. IV. c. 76, municipal corporations ; 10 Geo. IV. c. 44 ; and 2 & 3 Vict. c. 47, s. 53, police.

(*h*) *Per* two Justices, 20 Hen. VII. 6 b. 7b. ; case of the burgesses of Lincoln incorporated by charter, 21 July, 1 John (published in the Record Commissioners' Report) ; and see Merewether on Corporations, p. 308 ; see 1 Roll. Rep. 105 ; Brady on Boroughs, Appendix, No. 20 ; and see 2 Lord Raym. 1245. The courts will also judicially take notice that London has a court of record. 1 Leon. 284 ; 4 Leon. 182 ; O. Brid. 301. That

it is a city, *Withers v. Warner*, 1 Str. 309, &c., as they will of the existence generally of incorporated towns. 1 Chitty Pl. 218 ; 1 H. Bl. 356-7.

(*i*) Vide *Rex v. Mayor of London*, 9 B. & C. 2 ; *Same v. Same*, 4 M. & R. 36 ; *Same v. Johnson*, 6 N. & M. 870 ; and see pleadings in *Quo warranto* case, mentioned *ante*, p. 14.

(*k*) A corporation may be by prescription without charter, the latter being presumed in the former. *Lofft*, 556.

(*l*) See the reason of this in 2 Leon. 99. Lord Coke identifies *cities* in England with *bishops' sees*, Co. Litt. 109 b. ; but this only arises from the decree of the council of 1072, which directed bishops' sees to be transferred from towns to cities. Ingulph. Hist. 92, 93 ; Wood. Vin. Lect. Vol. 1, p. 302. The rank of city seems rather to be identical with that of the ancient *civitas*, mentioned *ante*, p. 12.

fact and name, by divers names of incorporation (m), and that they are now a body politic and corporate, by the name of the Mayor and Commonalty and Citizens of London."

The municipal constitution of the city of London, nominally consists of three distinct branches, viz. the lord mayor, the court of aldermen, and the court of common council, which have been compared to the three branches of the British constitution (n). The civic constitution however can hardly be said to be complete without the incorporated guilds, or companies, who are the exclusive electors of the chief magistrate, the sheriffs, and other officers of the corporation, constituting the common hall, an assembly answering to the ancient *comitia centuriata*; whilst the body of citizens assembled in the hustings or *comitia curiata*, though now very rarely called upon to act, are considered also to form a part of the constitutional government (o).

The city of London is a county of itself (p), and therefore has its sheriffs (q), its lieutenant (r), its county court or hustings (s), and other institutions similar to those of other counties. Like other counties also, it is divided into *wards* or hundreds, each having its *wardmote*, or hundred court (t), presided over by the alderman, answering to the *centenarius* or *aldermannus hundredi* of ancient days (u), and still retaining the institution of the *inquest*.

The precise connection of the *companies* or ancient free guilds with the civic constitution will be more conveniently noticed in a separate chapter (x), and the election and powers of the mayor, aldermen, common council

(m) Thus *mayor, sheriffs, aldermen, and commons of the city of London*, 7 H. V. lib. I. fol. 326 a. *Mayor and Commonalty*, 16 H. VIII. lib. N. 296 a. *Mayor, and City, and Citizens*, 13 H. VIII. *id. ib.* 181 a b. *Mayor, Commonalty and Citizens*, 14 H. VIII. Petty MSS. in Inner Temple library.

(n) 4 Inst. 249; 3 Leon. 264; per Fleetwood, J. Priv. Lond. 377; and per Sir O. Bridgman, in *Player*

v. *Hutchins*, judgments by Bannister and Hargrave, MSS. No. 56.

(o) 2 Rep. M. C. p. 27.

(p) 4 Inst. 248; Year Book, 49, H. III.; Com. Dig. London, H.

(q) *Post*, ch. 11.

(r) *Post*, p. 19.

(s) *Post*, ch. 13.

(t) *Post*, ch. 3.

(u) 1 Bl. Com. 115; Crabb's Hist. of Engl. Law, ch. 2.

(x) See ch. 7.

and other civic functionaries severally require distinct chapters, and from these rather than from any general remarks, the peculiar nature of the civic constitution can be best understood; but the operation upon the latter of the statute 11 Geo. I. c. 18 (y), commonly called "the City Election Act," is so important, that it is deemed advisable to describe it at some length.

By the 11 Geo. I. c. 18, entitled "An Act for regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City," reciting that whereas of late years great controversies and dissensions have arisen in the city of London at the elections of citizens to serve in Parliament, and of mayors, aldermen, sheriffs, and other officers of the said city; and many evil-minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens, and presumed to give their votes at such elections, in manifest violation of the rights and privileges of the citizens, and of the freedom of their elections, and to the disturbance of the public peace, and other evils which require a remedy, to the intent that suitable remedies may be provided for preserving the privileges of the city of London, and the freedom of elections therein, and for settling the right of such elections, and putting a stop to the aforesaid controversies and dissensions, and the ill consequences of the same, and that a constant supply may

(y) This act, the passing of which met with the strongest opposition in and out of Parliament, and was formally protested against in the House of Lords, is, after the lapse of 119 years, again attracting public attention.

It has been always deemed the most important innovation upon that system of independent self-government which peculiarly characterises the civic constitution (see *ante*, p. 13, and *post*, 45), and therefore directly inconsistent with the parliamentary guarantee afforded by the 2 W. & M. c. 8, and the other statutes (men-

tioned *ante*, p. 14) by which the ancient customary rights and privileges of the citizens are confirmed.

The proceedings on a recent contest for the office of alderman, have shown what absurd consequences it is capable of producing (see Haly's Report of Proceedings of the Bread-street Ward Scrutiny—Butterworth, 1843); and the corporation have lately intimated their intention to apply to Parliament for a repeal of the above act, and the introduction of a more rational system of municipal election.

be had of able officers, capable of supporting the dignity of and maintaining good order and government within that antient, populous, and loyal city, which is of the greatest consequence to the whole kingdom; it was enacted, that at all times from and after the first day of June, 1725, upon every election of a citizen or citizens to serve for the said city of London in Parliament (z), and upon all elections of mayors, sheriffs, chamberlains, bridgemasters, auditors of chamberlains and bridgemasters accounts, and all and every other officer and officers to be chosen in and for the said city by the liverymen thereof, and upon all elections of aldermen and common councilmen chosen at the respective wardmotes of the said city, the presiding officer or officers at such elections shall, in case a poll (a) be demanded by any of the candidates, or any two or more of the electors, appoint a convenient number of clerks to take the same; which clerks shall take the said poll in the presence of the presiding officer or officers, and be sworn by such officer or officers truly and indifferently to take the same, and to set down the name of each voter, and his place of residence or abode, and for whom he shall poll; and to poll no person who shall not be sworn, or, being a Quaker, shall not affirm according to the direction of this act; and every person before he is admitted to poll at any election of any citizen or citizens to serve in Parliament, or of any officer or officers usually chosen by the liverymen of the said city as aforesaid, shall take the oath hereinafter mentioned, or, being one of the people called Quakers, shall solemnly affirm the effect thereof; that is to say,

(z) This part of the act is now altered by the Parliamentary Reform Act, 2 Will. IV. c. 45.

(a) If a poll be not demanded, the act does not appear to affect the election at all, which must be conducted according to ancient usage, as to which see pp. 16, 27, 38, 69, 85; and when, as is the universal practice in London, this original election is by shew of

hands, the subsequent proceedings relate back to the time of such shew of hands, so as to render any intermediate events inoperative to affect the *qualifications* either of elector or candidate,—the poll, like the scrutiny, being merely an *investigation* of the votes of the electors on a demand made at the time of the election.

Liverymen's Oath at Elections.—" You do swear, that you are a freeman of London, and a liveryman of the company of _____, and have so been for the space of twelve calendar months; and that the place of your abode is at _____ in _____, and that you have not polled at this election. " So help you God."

And in case of any election of any alderman or common councilman, every person, before he is admitted to poll, shall take the oath hereinafter mentioned, or, being one of the people called Quakers, shall solemnly affirm the effect thereof; that is to say,

Oath at Wardmotes.—" You do swear, that you are a freeman of London, and an householder in the ward of _____, and have not polled at this election.

" So help you God."

And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or, being a Quaker, shall refuse or neglect to make such solemn affirmation as aforesaid, then and in every such case the poll or vote of such person or persons so neglecting or refusing shall be and the same is hereby declared to be null and void, and as such shall be rejected and disallowed.—s. 1 (b).

Demand of a Poll.—And to the intent that the poll at every such election may be expeditiously and duly taken, it is further enacted, that if a poll be demanded at any of the elections before mentioned, the presiding officer or officers at such election shall begin such poll the day the same shall be demanded, or the next day following at furthest, unless the same shall happen on a Sunday, and then on the next day after, and shall duly and orderly proceed thereon from day to day (Sundays excepted) until such poll be finished, and shall finish the poll at elections by the liverymen within seven days, exclusive of Sundays,

(b) The oaths of allegiance, &c. may be tendered, ss. 2 & 3; and it would appear that the taking these various oaths is all that the act requires; and the recorder on the re-

cent election for alderman mentioned above, would not permit any questions to be put to the voter at the poll. Report of Proceedings, p. 17.

and the poll at the wardmote within three days, exclusive of Sundays, after the commencing the same respectively ; and shall, upon adjourning the poll on each day at all and every the elections aforesaid, seal up the poll books with the seals and in the presence of such of the respective candidates, or persons deputed by them, as shall desire the same, and the said poll books shall not be opened again but at the time and place of meeting, in pursuance of such adjournment ; and after the said poll is finished, the said poll books, being sealed as aforesaid, shall within two days after be publicly opened at the place of election, and be duly and truly cast up, and within two days after such casting up, the numbers of the votes or polls for each candidate shall be truly, fairly, and publicly declared to the electors at the place of election by the officer or officers presiding at such election ; and if a scrutiny shall, upon such declaration made, be lawfully demanded, the same shall be granted and proceeded upon, and the respective candidates shall immediately nominate to the presiding officer or officers at such elections any number of persons qualified to vote at such election, not exceeding six, to be scrutineers for and on behalf of the candidate or candidates on each side, to whom the presiding officer or officers at such elections shall, within six days next after such scrutiny shall be demanded, upon request and at the charge of the candidate or candidates, or any the scrutineers on his or their behalfs, deliver or cause to be delivered to him or them a true copy, signed by such officer or officers, of the poll taken at such election ; and all and every the scrutinies to be had or taken upon any election to be made by the liverymen of the said city shall begin within ten days after the delivery of the copies of the said polls, and be proceeded on day by day (Sundays excepted), and shall be finished within fifteen days after the commencement of such scrutiny ; and thereupon the presiding officer or officers shall, within four days after the finishing such scrutiny, publicly declare at the place of such election which of the candidates is or are duly elected, and the number of legal votes for each can-

didate appearing to him or them upon such scrutiny ; and on the election of any officer or officers at the respective wardmotes of the said city, if a scrutiny be demanded, the candidates, or scrutineers nominated on their behalfs respectively, shall, within ten days next after the receipt of the copy or copies of the polls taken at such election, deliver or cause to be delivered to the presiding officer or officers the names in writing of the several persons who have polled in the said election against whose votes they shall object, with the particular objections against each respective name ; and the presiding officer or officers shall thereupon, within three days then next following, at the request and charges of any candidate or candidates, or the scrutineers named on his or their behalfs, deliver or cause to be delivered to him or them one or more true copy or copies (signed as aforesaid) of the paper containing such names and objections as aforesaid ; and the said presiding officer or officers, within ten days then next following (exclusive of Sundays), after having fully heard such of the said candidates as shall desire the same, or some person appointed by him or them (c), touching such objections, shall, at or in the place of election, openly and publicly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny ; and if the said presiding officer or officers, or any other per-

(c) On the late Bread-street scrutiny, the candidates were attended by counsel. The agents to save time exchanged lists of objections with one another—no notice of objection seems to have been served on the voters, nor were the latter admitted as evidence of their own qualifications to vote, but witnesses were called by virtue of the lord mayor's precept. The recorder determined that the objecting party had a right to select any case he chose from the list, but for mutual convenience a daily list was made out, to which the

respective parties confined themselves. The lord mayor is the presiding officer at the election of an alderman ; but, as we have elsewhere observed, the recorder usually officiates as his assessor when duties of a judicial nature are to be performed (*post*, p. 118) ; and on the recent scrutiny, after some discussion on this point between the latter and the lord mayor, the opinion of the recorder was delivered as the judgment of the court : see the Report quoted above, p. 68.

son or persons, shall offend in the premises, every such offender shall forfeit for every such offence the sum of two hundred pounds of lawful money of Great Britain, with full costs of suit, over and above all other penalties and forfeitures inflicted by any other act or acts of parliament.—s. 4.

List of the Voters disallowed.—After any election made and scrutiny taken, as is herein before provided and directed, the presiding officer or officers at such election and scrutiny shall deliver, under his or their hand or hands, a true list of the voters by whom or them disallowed upon such scrutiny to any of the candidates who shall, upon the final declaration of the election as aforesaid, demand the same, within six days after such demand made, such candidate paying for the same: Provided always, that no such list as is hereby directed to be given, nor any thing therein contained, shall be admitted to be given in evidence on any action or occasion whatsoever.—s. 5.

Livery Lists.—The mayor of the city of London for the time being, upon request to him made by any candidate or candidates, his or their agent or agents, at any election of a citizen or citizens to serve in Parliament for the said city, or of a mayor, or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts, as has been usual, requiring the masters and wardens of the livery companies of the said city respectively to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies, and the said clerks shall return such their respective lists upon oath within three days after the receipt of any such precepts; one of which lists so returned the said mayor shall, and he is hereby required forthwith to deliver or cause to be delivered to the candidate or candidates on each side at such election, or to his or their agent or agents respectively.—s. 6 (d).

Wardmote Elections.—By sect. 7, reciting that whereas divers controversies and disputes have arisen in the said

(d) See *post*, p. 85.

city of London touching the right of election of aldermen and common councilmen for the respective wards of the said city; for quieting all such disputes and controversies for the future, it is further enacted by the authority aforesaid, that from and after the said first day of June, in the year of our lord one thousand seven hundred and twenty-five, the right of election of aldermen and common councilmen for the several and respective wards of the said city, shall belong and appertain to *freemen of the said city of London, being householders paying scot as hereinafter is mentioned and provided, and bearing lot when required in their several and respective wards, and to none other whatsoever (e).*

Provided nevertheless, that the houses of such householders be respectively of the true and real value of £10 a year at the least, and that such householders be respectively the sole occupiers of such houses, and have been actually in the possession respectively of a house of such value in the ward wherein the election is made, by the space of twelve calendar months next before such election.—s. 8.

(e) The recent scrutiny has given rise to a great deal of discussion on the subject of this section. The first question which arises is on the term *Freemen*, and for this we must refer to ch. 5 of the present work, where (p. 62) we have spoken of an innovation on the ancient practice of admitting to the freedom of the city, by dispensing with the previous necessity of becoming free of one of the civic companies. This is an extremely important subject; and the question was, it was understood, intended to be argued at the scrutiny, had not the election been determined on other grounds. A question, however, arose as to the length of time previous to the election within which the freedom must have been taken up; and after a very able discussion on the construction of this and the succeeding section, in which

it was attempted to gather from them the intention of the legislature that the voter should have been a free-man as well as a householder for the full twelvemonths, the recorder, as the lord mayor's assessor, determined in favour of a voter who had only been recently admitted to his freedom, but was otherwise qualified under the act: see the argument and judgment in the Report, pp. 69-70.

The word *householder* in the act was very strictly construed, it being required that to constitute a good vote the party must have actually resided by himself, or his servant, on the premises.

The act does not preclude the court of aldermen from deciding whether the wardmote have elected a fit and proper person. *Scales v. Key*, 3 Per. & D. 505; 11 Ad. & E. 819.

Provided also, and for the better ascertaining what are the rates and taxes to which such householders ought to contribute and pay their scot, the same are hereby declared and enacted to be a rate to the church, to the poor, to the scavenger, to the orphans, and to the rates, in lieu of or for the watch and ward, and to such other annual rates as the citizens of London inhabiting therein shall hereafter be liable unto, other than and except annual aids granted or to be granted by Parliament (*f*); and in case any such householder, within the space aforesaid, shall have been *rated (g) and charged and contributed and paid* his scot to all the said rates or taxes, or 30*s.* a year to all or some of them, except as aforesaid, every such person shall be deemed and taken to be a person paying scot.—s. 9.

Partners.—Provided always, that such householder, within the space aforesaid, shall have been rated or charged, and contributed or paid his scot, to all and singular the rates and taxes (other than and except annual aids granted by Parliament) whereunto the citizens of London inhabiting therein are or shall be liable, or shall have paid in the whole to the said rates and taxes, or some of them, except as aforesaid, 30*s.* a year at least; and in case any two or more partners carry on a joint trade in any such house together, and shall have been householders of such house by such space of time as aforesaid, such partners shall, paying their scot in manner aforesaid, and bearing their respective proper lots, if required, have votes at the elections aforesaid, so as such house wherein such partners carry on their trade be of

(*f*) As to these various rates, see *post*, ch. 9.

(*g*) This clause not only requires that the voter shall have contributed towards the rates, but shall have been *rated* in the books to them; and on the above scrutiny, voters' names were struck out who had been misnamed in the rate books; and even where, in the case of several

occupiers of the same surname, the latter was used alone, or with the addition of "and Co.," the rating was held bad. See the various cases reported as above.

The ward authorities, it appears, are now sending round circulars in order to get the rate books corrected according to the exact circumstances of each case.

the true and real yearly value of as many respective sums of £10 a year, computed together, as there are partners.—s. 10.

Joint Occupiers.—Provided also, that where two persons and no more, not being partners, shall have by the space aforesaid severally inhabited in the same house, such two persons, severally paying their scots, and bearing their respective lots as aforesaid, shall have votes at the elections aforesaid, so as such house wherein such two persons inhabit be of the true and real yearly value of £20 or upwards, and that each of the said persons doth pay the yearly rent of £10 at the least for his respective part of such house.—s. 11.

Exempted Voters.—Provided always, that nothing in this act contained shall extend or be construed to extend to oblige any person or persons to pay any scot or bear any lot from the doing of which they are or shall be exempted and discharged by act of Parliament, charter, or writ of privilege, but that such person and persons so exempted and discharged shall and may vote at any election of any alderman, common councilman, or other officer usually chosen at the wardmotes of the said city, notwithstanding he or they shall not have borne such lot or paid such scot in such manner as he or they should or might have done in case this act had not been made, and no otherwise.—s. 12.

Appeals against Assessments.—And to the intent that the citizens and inhabitants of London may have a proper remedy and relief in case they or any of them shall be aggrieved by any tax, rate, or assessment made in or for the said city, or by any misbehaviour of any officer in relation thereto, or to the collecting the same; be it further enacted by the authority aforesaid, that it shall and may be lawful to and for all and every person and persons who from and after the said first day of June, in the year of our Lord one thousand seven hundred and twenty-five, shall be aggrieved by any of the assessments that shall or may be made in or for the said city, towards payment of the rate or tax for the orphans, and also to

the rate or tax in lieu of or for keeping watch and ward in the said city, or by any breach or neglect of duty committed by any officer concerning the same, to appeal in respect thereof to the mayor and court of aldermen of London; and it shall and may be lawful to and for any such person or persons, in case he or they shall be in anywise aggrieved by any other rate or assessment that shall be made in or for the said city, or any the wards, precincts, parishes, or inhabitants of the same, or by any breach or neglect of duty committed by any officer relating thereto, to appeal to the proper persons unto whom by law such appeal lies; and the said mayor and court of aldermen, and the said other persons to whom such appeal shall be lawfully made, respectively shall and may hear and finally determine the matter so complained of, and correct and settle the said rates.—s. 13.

Persons excluded from Voting.—No person or persons whatsoever shall, from and after the said first day of June, one thousand seven hundred and twenty-five, have any right or title to vote at any election of a citizen or citizens to serve in Parliament for the said city, or of any mayor or other officer or officers to be chosen by the liverymen thereof, who have not been upon the livery by the space of twelve calendar months before such election, and who shall not have paid their respective livery fines, or who, having paid the same, shall have received such fines back again in part or in all, or shall have had any allowance in respect thereof; and no person or persons whatsoever shall have any right to vote at any election of a citizen or citizens to serve in Parliament, or of any mayor, alderman, or other officer or officers of or for the said city, or any the wards or precincts thereof, who have at any time within the space of two years next before such election or elections, requested to be and accordingly have been discharged (*h*) from paying to the rates and taxes to which the citizens of London inhabiting therein are or shall be liable as aforesaid, or any of them, or have, within the time aforesaid, had or received any

(*h*) Such as exemption on account of house being empty.

alms whatsoever (i), and the vote of every such person shall be void.—s. 14.

CHAPTER II.

THE LORD MAYOR.

THE chief officer and head of the civic corporation is the mayor, annually nominated and elected (subject to confirmation by the court of aldermen) by the livery (a) out of the list of aldermen (b), or rather such of them as have served the office of sheriff (c).

The mode of conducting the election, and the incidents annexed thereto, will be described hereafter (d). This election is on the 29th September, but the mayor does not come into office till the 8th of November, when he is admitted and sworn by the citizens

(i) A receipt of coals and wood under a bequest to poor persons was held to invalidate the recipient's vote.—B. S. Ward, Report, p. 103.

(a) The charter of John, dated 9 May, 1207, by which the office of mayor was first constituted, grants to the "barons of our city of London" to choose from among themselves every year a mayor, who should be faithful, discreet, and fit to govern the city, so that when chosen he be presented to the king or his justiciar (if the king should not be present) and take his oath of fealty; and that it should be lawful for them at the end of the year to remove him, and substitute another if they would, or the same to remain, being duly presented as before.

The same terms are contained in Henry III.'s second charter (dated 18 Feb. A. R. 11.); but as to who are meant by the term of barons in these charters, whether the aldermen or the citizens, there seems some doubt. See Norton's Commentaries, pp. 81, 402.

(b) Latch, 231; *Rex v. Mayor of Oxford*, Palm. 454; 1 Kyd, 323.

(c) Act of Com. Council, 9 Ric. II. The livery, in fact, usually nominates the two senior aldermen who have not passed the chair, though they have, of course, the power to deviate if they wish, a power which has been exercised on more than one occasion recently. It is usual for the Lord Mayor to be a member of one of the twelve principal companies; but this seems to be only necessary to qualify him for president of the Irish Society, North. Hist. of London, lib. 1, ch. 20, p. 348; see *post*, ch. 6; out of the two aldermen returned by the livery, the court of aldermen select one, usually the senior, for mayor, who is forthwith invested with the chain of office. *Rex v. Parkins*, 3 B. & Ald. 668; in case of refusal to serve without sufficient excuse, he is liable to a penalty of 1000*l.* act of Com. Council, 25 Sept. 1800; but no one is compellable to serve twice. Act of Com. Council, 6 Oct. 37, Hen. VIII.

(d) See *post*, ch. 7.

at the Guildhall and appoints his different officers (*n*). The charter of John requires the presentment to be when the mayor is chosen. The seventh charter of Henry III. and that of Edward I. direct, that the mayor should be yearly presented, in the king's absence, to the barons of the Exchequer at Westminster, that he may be admitted (*o*); and in case neither the king or the barons should be at London or Westminster, then to the constable of the Tower; and as the day of election and that of taking office are different, it is usual for the lord mayor elect to be presented immediately on his election to the lord chancellor, and on the day after his coming into office to the Court of Exchequer; but the presentation to the chancellor on Michaelmas-day is considered an innovation (*p*).

The origin of the appellation of Lord, which the mayor of London enjoys, is attributed to the fourth charter of Edward III., which conferred on that officer the honour of having maces, the same as royal, carried before him by the serjeants;—an honour expressly interdicted to all other persons in the kingdom (*q*). The serjeants-at-mace of the city of London, may be easily identified with the Roman lictors carrying the fasces before the prætor (*r*). Officers called serjeants, having somewhat similar functions, are found in various parts of this country, and are sometimes called *virgatores*, because they anciently carried silver rods, gilt with gold, as they now do maces (*s*). The oppressive power of the

(*n*) It is considered that on the 8th November there are, in fact, two lord mayors, as the former mayor is not fully discharged from his office until his successor be accepted by the crown on the 9th. See *Strype's Stow*, lib. 5, ch. 5.

(*o*) *Mad. Hist. Exch.* vol. 2, p. 22, d. *et seq.* In early and unsettled times there have been some instances of

rejection on presentation, and particularly in the reign of Henry III. *Fabian's Chron.* part 7.

(*p*) *City Liberties*, p. 107.

(*q*) *Maitland's Hist. of London*, vol. 1, p. 129; *Northouck's Hist. of London*, tit. Mayor. *Strype's Stow*, lib. 5, ch. 5.

(*r*) *Spelm. Gloss. voc. Serjeant.*

(*s*) *Crompt. Jur.* 9; *Fleta*, lib. 2.

royal serjeants-at-arms, whose origin is doubtless the same, was formerly so much dreaded, that it was expressly provided that there should be no more than thirty of them in the whole realm, who should not oppress the people, on pain to lose their offices, and be fined (*t*), and the inferior officers called serjeants of cities, counties, and hundreds (*u*), or *servientes ad clavam*, were, in their more confined spheres, often equally oppressive (*x*); and it was to distinguish between them and the officers of the lord mayor of London, that the above privilege was granted. In 1378, the mayor of London was taxed at four pounds poll-tax, amongst the right honourable earls.

The ancient *reves* of London seem to have exercised an authority within the city, in a great degree independent of the crown (*y*); and the lord mayor seems still to retain many of the functions of the ancient *port-reve* or chief magistrate, both in the government of the city, and the negociation with strangers. The lord mayor is looked upon by law as the representative of the city on most occasions of public importance; and if the office be vacant by death or otherwise, the corporation can do no corporate act but that of choosing a new mayor (*z*). He is summoned to attend the privy council on the demise of the crown, to take the necessary measures with respect to the accession, and the proclamation of the successor; and is in constant communication with the executive government of the country on all matters of national interest, as the succession to the crown, the health or demise of the sovereign, or the birth of one of the royal family, and also with the great corporations of the city and kingdom (*a*). He is expected to preside at public

(*t*) 13 Ric. II. st. 1, c. 6.

(*u*) Bracton, lib. 5, c. 4.

(*x*) Norton's Com. p. 435; see Mad. Hist. of Exch. vol. 1, p. 147.

(*y*) Norton's Com. p. 24; and see an agreement between the bishops and *reves* or prefects of London and

the king, *id. ib.*, and Wilkins' *Leges Saxonice*, p. 65, and the antiquity and duties of the office of *reve*, *id.* p. 204.

(*z*) 21 Edw. IV. 58, n.

(*a*) 2 Rep. Mun. Cor. p. 78.

meetings, and to show attention to distinguished foreigners. At the coronation he officiates as chief butler, and receives a reward of a golden tankard or cup for his fee (*b*). From the crown he derives the office of lieutenant or viceroy, and he has all the powers of a lord lieutenant within his county,—a position which has at various periods imposed very arduous and responsible duties upon him, though happily, at the present day, he is not very likely to be called upon to act as head of the lieutenancy of the city in a military capacity. He is also perpetual coroner and escheator within the cities of London and Southwark (*c*); and his authority ceases not on the demise or abdication of the crown, as that of all commission officers do, but he is said in such cases to be the principal officer of the kingdom, as he appears to have been on the demise of Queen Elizabeth, and the accession of James and George I. (*d*).

The lord mayor derives from ancient grants various offices, which, on their first institution, conferred upon him most (*e*) extensive powers over the trade of the metropolis; in fact, nearly all the powers which Mr. Justice Blackstone attributes to the crown over the rest of the kingdom.

As clerk of the markets, he has the regulation of the weights and measures used in all the London markets,—an office given by charter 1 Edw. III. and 1 Edw. IV. to the exclusion of the ordinary clerk of the market, an offi-

(*b*) Priv. Lond. 49; 1 Roll. Rep. 145; 2 Rep. M. C. p. 78; Calth. Ancient Customs and Usages of London, p. 118; 3 Bulstr. 21.

(*c*) 1st chapter of Edward III.; 49 Edw. III. 16; Cro. Jac. 531.

(*d*) Maitland, vol. 2, lib. 4, p. 1194. So on the abdication of James II., a meeting was called of all the members of Charles II.'s different parliaments, and the lord mayor, aldermen, and fifty of the common

council; which was regarded as the most proper representation of the people in that exigency. Smollett's Hist. of England, *Interregnum*, A.D. 1688.

(*e*) See charters 1 Edw. III. and 1 Edw. IV. For the duty of this officer see 4 Inst. 225. No escheat has fallen in London or Southwark for many years; 2 Rep. M. C. p. 77.

cer of the king's household, who, before the 5 Geo. IV. c. 74, s. 23, had similar powers over the rest of the kingdom. The duties of this office, however, are now performed by the committee of city lands.

Under various charters(*e*), the lord mayor is properly the gauger of all wine, oil, and other gaugeable articles brought into the city. The duties of this office are performed by deputy, elected by the court of common council.

He is the meter of all coals and grain, salt and fruit; and has the power of searching and surveying all oil, hops, soap, butter, cheese, and such other like things coming into the port of London(*f*); the duties of which offices we shall have occasion to discuss hereafter(*g*).

The lord mayor had also anciently the assize(*h*) of bread, beer, ale, &c., and victuals, and things saleable in the city; but the assize has been now abolished, and particular regulations made by various acts of parliament in its stead(*i*).

A custom for the lord mayor to appoint places for taverns, &c., and to imprison for erecting one in other places, was held good(*k*).

The lord mayor is conservator of the rivers Thames and Medway(*l*), and perpetual commissioner in all affairs relating to the river Lea(*m*). The duties of these offices are, however, in fact, for the most part, now performed by the Thames Navigation Committee, and the harbour masters, the clerk to the harbour service, and the surveyor of the port of London; and above London Bridge by the water bailiff, who, in addition to the powers given him by the committee, receives annually a deputation

(*e*) 18 Edw. IV.; 1 Henry VII.; 14 Car. I. and 16 Car. II.; and stat. 57 Geo. III. c. LX.

(*f*) See charters 4 Edw. III., 1 Edw. IV. and Hen. VII.; 1st & 2nd charters of James I.

(*g*) *Post*, Regulations of Trade.

(*h*) 51 Hen. III. st. 1 & 6, Ord. pisto., and 2 & 3 Edw. VI. c. 15.

(*i*) See 31 Geo. II. c. 29, 1 Geo. IV. c. CVI.

(*k*) Mar. 15.

(*l*) 17 Rich. II. c. 9.

(*m*) 4 Inst. 250.

from the mayor empowering him to perform the duties incident to the office. The lord mayor also holds, in person, eight courts of conservancy in the year; two for each of the counties of Middlesex, Surrey, Kent, and Essex, and occasionally a court in London, the details of which will be given hereafter (n).

Excepting the holding these courts of conservancy, and the appointing the four harbour masters, the lord mayor does not personally interfere with the conservancy, or the management of the business of the port of London, which is entrusted to the Thames Navigation and the Port of London Committee.

The lord mayor is admiral of the port of London, but no courts of admiralty are now held under the authority of the corporation. Nor has any one of the privileges attached to this function been exercised by the lord mayor in person, since the reign of Elizabeth, with the exception of a claim to royal fish caught in the river, occasionally enforced on behalf of the lord mayor.

The lord mayor has the power to take recognizances of any persons, being of full age, or women unmarried, for the payment of money belonging to orphans of freemen of the city (o), even though the debt were contracted out of London (p). The ancient security, called a statute merchant, can also be taken before him (q); as may also the acknowledgment of a married woman, of the disposition of lands by bargain and sale (r). He has a seal, which is affixed to deeds, notarial instruments, intended to be transmitted to the colonies (s), and exemplifications of the freedom of the city, in order to claim

(n) 2 Rep. M. C. p. 74, 77.

(o) 4 Co. 64 b.; 2 Inst. 395; Roll. Abr. 557; Moor, 871; *Chamberlain v. Thorp*, Cro. Eliz. 186, pl. 11; *S. C.* id. 682, pl. 13; Bac. Abr. tit. Customs of London, A; and the courts above will take notice thereof, Leon. 284; see, *post*, tit. Orphans.

(p) *Sed vid.* Cro. Eliz. 186, and

Leon. 130, *S. C.*, where Gawdy, J., held that the custom could not extend to strangers.

(q) 13 Edw. I. st. 2; 2 Roll. Abr. 466.

(r) Priv. Lond. 123, 148; Hob. 225; Cro. El. 869.

(s) 2 Rep. M. C. Com. p. 78, 90; Lib. H. fol. 132, b.

the privileges of a citizen. The lord mayor has various judicial powers given him by act of parliament, such as in cases of disputes about tithes in London (*t*), and he is also looked upon as the general arbiter of mercantile and private disputes (*u*). If any apprentice or citizen of London is carried from the city on shipboard, or there detained against his will, the mayor may send his warrant by the water bailiff, and compel the person in command of the vessel to release him (*x*).

By virtue of his office, the lord mayor is a justice of gaol delivery for Newgate (*y*), and is named as a principal in every commission for that purpose (*z*); and is also a justice of the peace for the city of London, and is looked upon as the head of this department. He usually opens the London sessions in person. As a single justice, he has very important duties to perform. The whole of the city is divided into two parts, by a line running nearly north and south, through Queen Street and King Street. All cases requiring the interference of a justice occurring to the eastward of this line, are brought before the lord mayor, who sits for the purpose daily, (with the exception of some occasional relief by other aldermen,) at the justice room at the Mansion-house. The upper and under marshal are in daily attendance, to communicate with his lordship on matters of police (*a*). Besides the ordinary duties of a justice of the peace, the lord mayor has the power of causing any person inhabiting within London or the liberties, to be summoned to appear before him (*b*), and to hear and determine the offence charged upon the party. He is a justice of peace also for Southwark: he presides at the sessions there, and is expected to open them, but he does not transact in person any other of the ordinary functions of a justice of peace

(*t*) 37 Hen. VIII. c. 12; 22 & 23 Car. II. c. 15; 44 Geo. III. c. LXXXIX.; *post*, tit. Tithes.

(*u*) 2 Rep. M. C. p. 76.

(*x*) 2 Stow, 485.

(*y*) Charters 23 Hen. VI., 2 Edw. IV. and 6 James I.

(*z*) 3 Inst. 72; 2 Rich. III. 11, a.

(*a*) 2 Rep. M. C. p. 77.

(*b*) 2 Stow's Survey, 485.

in Southwark, which are discharged by the justices of Southwark.

In his character of chief magistrate of the city, the lord mayor presides at the court of aldermen in the inner chamber, the court of common council, and the court of common hall; and as such, issues his precept for the holding of any of these courts. He is also nominally president of the court of aldermen in the outer chamber (or lord mayor's court). He is chairman of every committee which he attends. According to some opinions, he is, *ex officio*, a member of all committees of the corporation; though, in point of fact, he seldom attends, except where there is business especially requiring his presence. He is also chairman of the commissioners of sewers (c), and has power to summon them to a public meeting whenever he thinks proper (d). The corporation provide the lord mayor with the Mansion-house, which they keep in repair at their own expense, and annually grant a sum of money, amounting nearly to £8000, and also provide various officers at their own expense, to support the dignity of the office.

(c) 12 S. O. 8 December, 1788.

(d) 11 Geo. III. c. 29, s. 6.

Amended 15 March, 1827.

CHAPTER III.

THE ALDERMEN.

THE city at large, being looked upon as a county (*a*), was at a very early period divided into wards, bearing nearly the same relation to the city, that the hundred did to the shire; and, indeed, we find that all hundreds were in the ancient law French called *Gards* (*b*), and anciently partook as well of a military (*c*), as a civil character, each containing a hundred families of freemen, who were subject to an officer, called the *centenarius* among the Franks, and other nations on the Continent; and *hundredarius* or *aldermannus hundredi*, among the Saxons (*d*).

This division into hundreds, according to Montesquieu (*c*), was made by Clotharius and Childebert, with a view of obliging each district to answer for the robberies committed in their division. The *hundredarius* had both a civil and military duty: he presided over the hundred court, which was assembled once in four weeks, for the decision of causes, by the oath of twelve freeholders: an institution supposed to be the origin of our trial by jury (*e*), but which has now dwindled into the mere leet or wardmote inquest. Besides the ordinary monthly meetings of the hundred, there was an annual meeting, appointed for a more general inspection of the police of the district, for the inquiry into crimes, the correction of abuses in magistrates, and the obliging every person to show the *decennary* in which he was registered. The people, in imitation of their ancestors, the ancient

(*a*) 4 Inst. 248.

(*b*) Id. 249; 7 Hen. VI. 36, 38;
7 Hen. VII. 4.

(*c*) Mont. Esp. de Lois, lib. 30,

ch. 17.

(*d*) 1 Bl. Com. 115; Crabb's
Hist. of Eng. Law, ch. 2.

(*e*) Hume's Alfred, A. 901.

Germans, assembled there in arms; whence a hundred was sometimes called a *wapentake*, and its court served both for the support of military discipline, and for the administration of civil justice(*f*), causes of great moment being heard and determined there(*g*). And we shall see, when we come to speak of the wardmote, that their various functions were anciently transacted there equally as strictly as in the hundred court.

The *centenarii* were themselves subject to a superior officer, called the count or *comes* (*h*); under whom they served in war, and to whose court there was an appeal from their decision in the same manner as the ancient reves of London were subject to their superior officer, the portreve. The division of London into wards was not, like that of the rest of the kingdom, made after any uniform rule, but seems rather to have been a modification of a still more ancient system. The first mention we find under the Anglo-Saxons of anything approaching to the present wards, is in the instance of the ancient free guilds—associations of men contributing to a joint stock(*i*) for mutual defence, and governed by a *gerefas*, or *reve*, who may possibly have been identical with the Roman *magnates*, or senators, mentioned by Fitz Stephen(*k*).

“ This is the council (begins one of Athelstane’s laws), that the bishops and reves which belong to London borough have pronounced, and with pledges confirmed in our free guilds”(*l*).

The title of alderman, was one of great honour among the Anglo-Saxons, and was originally given to the very highest of their chieftains—Cerdic and Cynric, and Hengist and Horsa; but was afterwards given by courtesy to almost every person in command(*m*). It is uncertain when

(*f*) Hume’s Alfred, 901.

(*g*) Dugd. Orig. Jur. 27.

(*h*) 1 Bl. Com. 115; Mont. lib. 30, ch. 17.

(*i*) Spelm. Gloss. voce Geldum.

(*k*) See 4 Inst. 248, *ante*, p. 2.

(*l*) Wilt. Leg. Sax. p. 65; Turner’s Anglo-Sax. vol. 3, ch. 10, p. 101, 5th ed.

(*m*) Sir F. Palgrave, Ang.-Sax.

it was first used in London, none of the early charters containing any mention of aldermen, *eo nomine*; but it is most likely they are the barons noticed in the charter of Henry I. (m) Aldermen are, however, mentioned in the reign of Henry II. as presiding over the district guilds(n); and in the reign of Henry III. aldermanries had become a common term for a civic district comprised within a leet jurisdiction, as well in London as in other cities, and were then a property in fee and hereditary(o); but this was evidently an usurpation upon the ancient rights of the citizens. In a volume entitled, "*De Antiquis Legibus*," considered as authority, and preserved in the town clerk's office, are various historical entries concerning or noticing the aldermen. In 1248, the aldermanry of an alderman, who committed certain offences against the city, was seized by the mayor, and the alderman was amoved; and the "*homines wardæ accepta licencia eligendi*" elected another in his stead; and in 1256, in like manner, several aldermen having been amoved, others were appointed in the several wards. It was declared by the charter of Edward II. that the aldermen serve but for one year, and that there should be no re-election. The charter of 7 Ric. II. enacted, that the aldermen might be re-elected. The office was made to last till reasonable removal, by stat. 17 Ric. II. c. 11, and therefore is in effect an election for life. By an act of common council of 21 Ric. II., it was directed that two at least honest and discreet men should be chosen and presented to the mayor and aldermen, who were to select one of these at their discretion. By an act of common council, of 13 Ann., for reviving the ancient manner of electing aldermen, the last mentioned

ch. 4; and see Heywood's Dissertation, p. 53, *et seq.*; Spelman's Gloss. voce Aldermannus.

(m) 2 Rep. M. C. p. 7, *ante*, p. 15.

(n) Mad. Hist. Exch. p. 562. Bridge-gild is mentioned by name,

Madox's *Firma Burgi*, p. 26. Knightengild, the ancient name of Portsoken, remained till a comparatively modern period.

(o) Id. lib. 14; Norton's Comm. lib. 2, ch. 22, p. 437.

act was repealed, and it was ordained, "that from thenceforth, in all elections of aldermen, at a wardmote to be holden for that purpose, there should be elected, according to ancient custom, only one able and sufficient citizen and freeman of the said city, not being an alderman, to be returned to the court of mayor and aldermen, which person so elected should be by them admitted and sworn well and truly to execute the said office of alderman" (*p*).

The wards of the city are twenty-six in number :—

- | | |
|--------------------|-------------------------|
| 1. Aldersgate | 14. Cornhill |
| 2. Aldgate | 15. Cripplegate-within |
| 3. Bassishaw | 16. Cripplegate-without |
| 4. Billingsgate | 17. Dowgate |
| 5. Bishopsgate | 18. Farringdon-within |
| 6. Bread Street | 19. Farringdon-without |
| 7. Bridge | 20. Langbourne |
| 8. Broad Street | 21. Lime Street |
| 9. Candlewick | 22. Portsoken |
| 10. Castle Baynard | 23. Queenhithe |
| 11. Cheap | 24. Tower |
| 12. Coleman Street | 25. Vintry |
| 13. Cordwainers | 26. Wallbrook |

And since the reign of Richard II., when Farringdon-without was separated from Farringdon-within by statute (*q*), they have retained the same names, and, as far as can be ascertained, their present boundaries, except so far as the boundaries have been altered by the addition of districts previously excepted from the city jurisdiction. Thus Whitefriars and Blackfriars were respectively declared to be part of Farringdon-without and Farringdon-within, by acts of common council of the 11th March, 1736, and 28th February, 1806, and St. Martin's-le-Grand was annexed to the ward of Aldersgate by the Post-office Act (*r*). The wards are very

(*p*) *Res v. Thomas Johnson*, 6 Nev. & M. 871.

(*q*) 17 Ric. II. c. 13.

(*r*) 55 Geo. III. c. XCI. s. 71; non-freemen may keep shops there, s. 72.

unequal in size. Those extending beyond the walls are much larger than the rest. With respect to all the wards, except Bridge-without, the election is made at a wardmote, summoned by the lord mayor's precept, within fourteen days after a vacancy occurs (*s*), and held before the common council of the ward, and the lord mayor, or his *locum tenens* who has served as lord mayor; and any freeman of the city, not already an alderman, is eligible, provided he be born within the kingdom, and his father an Englishman (*t*).

With respect to the ward of Bridge-without, which includes the borough of Southwark, granted by the charter of Edward VI., it was, after various changes, ordained by act of common council of 10 Ann., that the senior alderman who had passed the chair should remove to this ward, unless he should decline to accept it; in which case it was to go to the next in seniority, and so on, till all should refuse who had passed the chair. When this should take placé, the common council were to elect any freeman. An act of common council, passed in 1725, directs that the acceptance should be signified at the first court of aldermen, held within ten days after the vacancy; or, if there be then a recess of the court, within ten days after the recess. This assent may be given in writing. The place is usually taken by the senior alderman of the city (*u*). There is a fine of £500 (*x*) on refusal to serve as an alderman; and it is decided in an old case to be a good custom to imprison until the person elected takes the oath of office (*y*); but the office is now usually an object of ambition, and it is very rarely necessary to enforce any penalty for refusal to serve.

The alderman has the rule and government of his ward, and anciently his authority was very extensive. He had all the authority of a conservator of the peace

(*s*) Act of Common Council, 25 January, 1831. It was anciently four days; Act of Common Council, 9 August, 1716.

(*t*) 2 Stow, 239.

(*u*) 2 Report, M. C. p. 32.

(*x*) Act of Common Council, 17 April, 1812.

(*y*) March. 179.

within the ward. The watch, then a very efficacious military force, was under his command, and he bore his banner and arms as a baron. The ward was under his government and personal inspection; he kept a roll of the inhabitants, containing their names, dwellings, places of abode and trades; he regulated inns and other places of public resort, tried weights and measures, held the views of frank-pledge, and inquiring after suspected persons; superintended the cleansing the highways and watercourses; and, in short, had the constant superintendence of the police of the district (*z*). At present, his principal duties, as a ward officer, besides a general attention to the interests of the ward, consist in the summoning and presiding at the wardmote, and directing prosecutions against nuisances. The alderman is permitted to appoint a deputy out of the common councilmen (*a*), who can execute all the ward duties of the alderman, except the presiding at the wardmote for election of officers on St. Thomas's day. Every alderman is a justice of the peace, by virtue of his office (*b*): and by stat. 43 Eliz. c. 2, s. 8, the alderman of every ward may, in his ward, transact such business as requires two magistrates in other cases. One alderman attends by rotation among the body, for a week at one time, in the justice-room in Guildhall, where he transacts the magisterial business of so much of the city as lies to the westward of a line drawn nearly north and south, through Queen Street and King Street (*c*).

The aldermen, as justices of the city of London, have very extensive powers (*d*) given them by the various metropolitan police acts, which we shall have occasion to refer to hereafter. Any two aldermen, acting as justices of the peace for the city and liberties, have, within such limits, all the powers, privileges, and duties of a police

(*z*) 2 Report, M. C. p. 137. See also Strype's Stow, lib. 5, ch. 5.

(*a*) Act of Common Council, 6 December, 1712.

(*b*) Charter, 25 August, 15 Geo. II.

(*c*) 2 Report, M. C. p. 80, *ante*, p. 22.

(*d*) 3 & 4 Vict. c. 84, s. 15.

magistrate (*d*) under the Metropolitan Police Act (*e*), and the Police Courts Act (*f*).

The aldermen attend the Guildhall sessions as magistrates eight times in the year : six attend at each session, the succession being regulated by rotation. At the sessions such matters as belong locally to any ward, (the licensing of a public-house, for instance,) are usually determined upon the recommendation of the alderman of the ward (*g*).

All the aldermen with the recorder are justices of oyer and terminer, and as such are named in the commission for holding the Old Bailey sessions (*h*). Six attend at each of the eight sessions, being the same six as attend at the Guildhall sessions immediately preceding (*i*).

The Courts of Requests Act (*k*) directs that two aldermen shall be among the commissioners ; and the court of aldermen name two aldermen, one above and one below the chair, for each month.

The mayor, and all aldermen who have passed the chair, are justices of Southwark (*l*). There is a division made, by which all these justices are distributed for attendance in turn, at the four Southwark sessions. There is also a permanent appointment of two of the aldermen to be acting magistrates for Southwark. The appointment is in form merely a request of the court of aldermen. These aldermen are also named joint justices of the Bridge-yard, (which is a very small part of Southwark, out of the jurisdiction of the ordinary justices of the borough), and receive as such £400 annually each. The justices attend every week-day at the Town-hall in Southwark, taking the weeks by turns ; and a day is fixed in every week, on which both justices attend for the transaction of such business as requires two magis-

(*d*) 3 & 4 Vict. c. 84, s. 6.

(*e*) 2 & 3 Vict. c. 47.

(*f*) Id. c. 71.

(*g*) 2 Report, M. C. p. 80.

(*h*) 2 Charter of Jas. I.

(*i*) 2 Report, M. C. p. 80.

(*k*) See 32 Geo. III. c. 59, s. 5,
not altered by 9 Geo. IV. c. 61,
s. 36.

(*l*) Charter of Edw. VI.

trates. The county magistrates claim a concurrent jurisdiction in Southwark, and sit at Union Hall (m).

The three senior aldermen are governors of the goods, revenues, lands, &c. of Greenwich Hospital (m).

The aldermen have various exemptions and privileges. They are exempt from the office of constable (n), overseer, juror, tax collector (o). The lord mayor is chosen, as we have seen, by themselves out of their own body (p), and their presence is therefore essential to the validity of the election (q).

If an alderman of London anciently witnessed a contract, it was not competent for either of the parties to deny it and wage his law (r); and anciently it was considered, that if any one spoke opprobriously of an alderman, he might be punished for the contempt by imprisonment, and if a freeman, might be disfranchised; but this was declared not to be legal, although such conduct may still be punished by fine (s), provided, it is presumed, that the offence related to the alderman in his official capacity (t); and it has been since held a good custom to punish by information in the mayor's court, in the name of the common serjeant of the city, assaults on aldermen, and affronting language, &c. (t).

Every alderman is, *ex officio*, a member of the court of common council, and two aldermen besides the lord mayor or his *locum tenens* must be present to make a *quorum*. The aldermen also have great influence in the committees of the court.

But by far the most extensive powers of the aldermen are exercised in their collective capacity as an independent court; exercising both a legislative and executive control in the municipal government. In 1229, a certain

(m) 2 Report, M. C. p. 80.

(n) *Aldn. Abdy's case*, Cro. Car. 585; 2 Hawk. X. 40.

(o) 1 Bott, 8; Theobald's Poor Laws, 17; Charter 2 Edw. IV.; Strype's Stow, lib. 5, ch. 5, Priv. Lond. 16, 110, lib. Custom, fol. 220.

(p) *Ante*, p. 15.

(q) Strype's Stow, lib. 5, ch. 5.

(r) Bro. Customs, pl. 43, citing 1 Edw. IV. 5.

(s) Ventr. 327.

(t) 7 Mod. 28, 29.

ordinance was made by the aldermen and magnates, *per assensum universum civium*; but this right of legislation on their part was opposed in 1249, on a question concerning a proposed grant to the abbot of Westminster, about which the king's justices held a *colloquium* with the mayor and aldermen alone, for the purpose, as it should seem, of obtaining their assent. The commonalty refused to allow the magistrates to enter into any treaty without their assent, which, as they alleged, was their accustomed franchise confirmed by charter (u).

There are traces of various other disputes between the aldermen and commonalty, as to the extent of the separate power of the former, but it was subsequently declared by act of parliament (x), that because the errors, defaults, and misprisions notoriously used in the city of London for default of good governance of the mayor, sheriffs, and aldermen, could not be inquired of by people of the same city; the said mayor, sheriffs, and aldermen, which have the governance of the city, should redress and correct the errors, defaults, and misprisions which be used in the city of London, for default of good government. The present functions of the court of aldermen may be classed generally under two heads;—those belonging to its judicial capacity; and those belonging to it as representing, in some respects, the executive power of the corporation. Various modern acts of parliament (y) have invested this court with the power of making by-laws for particular purposes; but it does not now possess much of that legislative power over the affairs of the corporation, which seems anciently to have belonged to it: from lapse of time, and the absence of any definitive settlement of the municipal constitution, the limits of its functions are not so accurately defined as might be expedient (z). In its judicial capacity, all the aldermen are judges of the courts of hustings and lord mayor's court,

(u) Lib. De Antiquis Legibus, before mentioned.

(x) 27 Edw. III. c. 10; 4 Inst. 247.

(y) Hackney-coach Act, 1 & 2

Will. IV. c. 22, s. 54; Coal Act, 1 & 2 Will. IV. c. LXXVI. s. 32,

33; Drovers, 21 Geo. III. c. 67, s. 4.

(z) 2 Rep. M. C. p. 67.

and together form the bench of magistrates holding the London sessions, and have the licensing of all public houses within the city (a).

The mayor and aldermen of London are not a corporation, but a court (b).

They have the sole cognizance and determination of the election and return of every person elected into any place or office at any wardmote court, whenever the merits of such election are brought in question, and the examining and determining whether any person, returned to them as an alderman of any ward, is, according to their discretion and sound conscience, a fit and proper person, and duly qualified for the office (c), together with the power of afterwards removing him for reasonable cause (d): and if the inhabitants of any ward three times return the same person as alderman, who has been before adjudged and determined by this court not to be a fit and proper person to support the dignity and discharge the duties of the office, the court may themselves nominate, elect, and admit a fit and proper person, being a freeman of the said city, out of the whole citizens, to fill the office (e), and their customs are not in anywise affected by the 11 Geo. I. c. 18.

The court of aldermen has also the exclusive cognizance and examination of the elections of persons into the common council (f), and grants freedoms in particular cases, examines the validity of claims to freedom as of right, admits and swears in certain officers and brokers, and receives the presentments of the ward inquests (g). The court appears also to have formerly exercised a jurisdiction over the proceedings of the companies, which was

(a) 2 Rep. M. C. p. 217.

(b) Resolved, Carth. 172, Hil. 2 & 3 Will. & M. in B. R., *Rich v. Pilkington*.

(c) *Res v. Johnson*, 6 Nev. & M. 870; 1 M'Lean & Rob. 1; *Scales v. Key*, 3 Per. & Dav. 505.

(d) Such as for being in custody,

in execution, and under an escape warrant, without probability of discharge; *Res v. London*, 4 Dougl. 361.

(e) *Res v. Johnson*, 6 Nev. & M. 879; and 1 M'Lean & Rob. 1.

(f) *Bolton v. Jeffes* (in error), 2 Bro. P. C. 463.

(g) 2 Rep. M. C. p. 67.

enforced in some instances by the imprisonment of officers refusing to obey the court. This seems to have been in some degree analogous to the powers of the Queen's Bench, exercised by *mandamus* over corporations in general. The power still exists : it has, however, been very rarely called into practice of late years (*g*). In its executive capacity, it has a power (concurrent, and in some respects conflicting, with that of the common council) to order payments out of the city cash ; it superintends the prisons, orders prosecutions, and instructs the remembrancer to prepare acts of parliament. Other functions of an executive nature, analogous to those above mentioned, have been from time to time entrusted to this court by acts of parliament (*g*).

The full style of the court of aldermen is the "Court of the Mayor and Aldermen in the Inner Chamber," to distinguish it from the outer chamber, or lord mayor's court.

The court of aldermen consists of the lord mayor, or his *locum tenens*, who must be an alderman having passed the chair, besides twelve other aldermen at least. The court is almost invariably called by summons from the lord mayor, served by one of the yeomen of the water-side, which may be done at a moment's notice and verbally, but is seldom so. The summons does not contain a notice of the business to be done, unless it be of a very special kind ; but the town clerk has in readiness a list of *agenda*. There is a recess from the 25th July to the 2nd September, during which no courts are held, unless specially summoned. At the commencement of the year, the town clerk makes a calendar of the days, generally from fifteen to eighteen every year, on which it is proposed to hold courts, which is exhibited on the outside of the court, and is usually published in the city almanacs ; and besides these appointed days, the lord mayor summons other courts specially when requisite, to the number sometimes in all of thirty courts in the year (*h*).

(*g*) *Id. ib.*

(*h*) *Id. ib.*

The court is not confined to business mentioned in the town clerk's *agenda*, or in the summons. A very great part of the business of the court is brought on by petitions, which take precedence of other business; and, except those for admissions, or for the receiving of presentments or appeals, are presented by some alderman. The party petitioning, in the greater number of cases, gives notice to the town clerk, who is thus enabled to warn him of the time at which his petition will be discussed. The petition may be presented in person or by an agent, professional or otherwise; and notice of the result is not sent to the petitioner, but he must ascertain it at the town clerk's office. The court does not assign reasons for its decisions. The hearing is public, but the deliberation strictly private. The proceedings of the courts of common council are regularly read over by the clerk, at the next succeeding court of aldermen, though they do not require confirmation by the latter (i).

The proceedings of the court of aldermen are entered in the Journals, called the Repertories; which are regularly kept and indexed by the town clerk, under whose custody they are kept in the muniment room, and may be inspected by the aldermen, recorder, common serjeant, chamberlain, town clerk, and city solicitor. If any other person apply, the town clerk acts on his own discretion, and usually admits the inspection, making no other charge to the common council and city functionaries except for copying; but to other persons, whether freemen or not, 2s. 6d. for the search (k). For the transaction of the details of certain departments of business, this court frequently appoints committees, consisting either of the whole court, or of certain members of it. Besides which, there are the following standing committees, which are re-appointed at the commencement of each mayoralty. The committee of privileges, committee of law charges, committee of general purposes, committee of Emanuel

(i) *Id.* p. 68.(k) *Id.* *ib.*

Hospital, and committee of livery cloth. The standing committees are comprised of eight aldermen and the lord mayor; but any alderman who chooses to attend, has a vote. They are attended by the town clerk, and presided over by the lord mayor, or the senior alderman present. Any of these aldermen form a *quorum* in the standing committees, except that when the committee consists of select members of the court, one of those members at least must be present (*k*).

This court elects some of the most important officers of the corporation:—The recorder (*l*), the steward of Southwark; the justice of Bridge-yard (*m*); the clerk to the lord mayor, and his assistant; the clerks to the sitting justices at Guildhall, and for the borough; and the keepers, governor, ordinary chaplains, and surgeons of the several prisons. The court also appoints the district surveyors, the barge-master, and the four beadles of the court of requests.

This court may punish any of the city officers misbehaving themselves, upon complaint and proof, by suspending them from the profits of their places during the pleasure of the court (*n*).

(*k*) *Id. ib.*

(*l*) For the election of a recorder a special court is held; he usually fills the office of steward of Southwark.

(*m*) The justice of Bridge-yard is always one of their own body; *ante*, p. 30.

(*n*) 2 Stow's Survey, 471.

CHAPTER IV.

THE COMMON COUNCIL.

THE third branch of the civic government is the common council, who, like the popular representatives under every other constitution, are now justly considered the most important of the three.

Anciently the freemen of the city met in general assembly, like the *comitia curiata* at Rome, with many of the powers now exercised by this court: sometimes appointing committees to transact the details of business; but on all important occasions assembling together, and acting in one body. In the reign of Edward I., however, deputies or representatives began to be elected in each ward, to consent to ordinances, discuss the affairs of the city, and grant aids or taxes for the support of the civic government. This system continued for some years; but the right of election was at first the source of some confusion and dispute. The members of the *guilds*, or companies, which we shall notice hereafter, claiming to be the only true citizens, and therefore exclusively entitled to the elective franchise; and the *populus*, or general inhabitants, being equally urgent in favour of their claims; and at length some of the disputants went so far as to claim the interference of the king (*a*), who at once addressed a privy seal to the corporation, commanding them to stay all further proceedings till the matter could be brought before parliament: but the body of citizens, jealous of such interference, arranged for the present in favour of the more select class, that the common council should be composed of persons of the *wiser and more sufficient of the mysteries*, or companies, elected by the men

(a) 2 Rep. M. C. p. 14.

of the same mysteries, and not otherwise; and from so many of the mysteries as should appear to be needful to the mayor, according to the difficulty of the matter: and the whole commonalty agreed to abide by what these persons, together with the mayor and aldermen, should ordain in their names (*b*). This was at that time a far more equitable mode of representation than may at present appear, for persons of the same crafts or mysteries formerly lived together in the same quarter of the town: a proof of which remains in the names of several of the present wards;—as Cordwainers, Candlewick, Vintry, and Cornhill (*c*). Hence trades as well as districts would both be represented, in whatever mode the common council were chosen. A few years after, however, the popular body again made an effort to secure their right to the elective franchise. Petitions were presented to the mayor, at a great common hall of the citizens, praying that the common council might thenceforth consist of sufficient people, chosen under the care of the aldermen, four out of each ward; and not out of the guilds, mysteries, or crafts as before: and Nicholas Brembre, the mayor, having countenanced the petition, and promoted the plan proposed, brought it before the court of common council (*d*); and after some delay, a committee was formed in the early part of the reign of Richard II., to advise upon some permanent settlement for the future. This committee agreed upon the following articles, which were approved of by a meeting of the whole body of citizens, headed by the mayor and aldermen, in Guildhall, on the Friday before the Purification in the above year (*e*). “In order that the common council of the city may be composed of persons qualified as well by property as by sense or sound discretion, the aldermen were charged every year to assemble

(*b*) *Id. ib.*

(*d*) Lib. Alb. fol. 10; Ent. Hist.

(*c*) Maitland's Hist. of London,
and Stow's Survey; Mildmay's City
Elections, p. 53, n. 1.

of Lond. *sub anno* 1383.

(*e*) See 4 Co. Rep. p. 77.

their wards, to choose four of the most efficient persons that were in their ward, to be of the common council for the following year; and whose names were to be presented to the mayor, and accepted or received by him: but it was provided, that the mayor should not accept or receive the names of more than eight persons of one *mystery*, for the whole city. If the names of a greater number than eight persons of one mystery were presented, then the mayor and six aldermen were directed to select eight out of the whole number returned, and declare a new election for the remainder." The second article declared, that the members required from each ward were to be considered as the average of ward representation: and for as much as there could not always be found in every ward, four persons able to be of the common council, it was provided, that from the wards which are larger and more sufficiently inhabited, there be chosen six; from the others, four, or two, according to their sufficiency: and the wards are classed accordingly; namely, Farringdon (then one ward), Cripplegate, Cordwainers, Cheap, and Bridge, six each: Vintry, Dowgate, Walbrook, Candlewick, Bishopsgate, Tower, Cornhill, Queenhithe, Langbourn, Billingsgate, Aldersgate, Castle Baynard, Broad Street, and Bread Street, four each: Bassishaw, Coleman Street, Lime Street, Portsoken, and Aldgate, two each, in all ninety-six members (f). This ordinance, which was at first a mere temporary measure, was afterwards confirmed and made perpetual, *anno* 9 Ric. II.; and upon this basis of territorial representation, such representation having relation also to the numerical population of the wards, the present court of common council was established; nor has any alteration been introduced in the system, excepting by an increase of the numbers. In some cases, the manner in which this increase was effected cannot be ascertained; but in others, the acts of common

(f) Lib. Alb. fol. 10; 2 Rep. M. C. p. 15.

council are extant, granting from time to time additional representatives to particular wards (*g*).

By a late act of common council (*h*), the representative system has been considerably altered, so as to meet the change in the relative number of inhabitants, and the amount of rateable property in each ward; and the following is the number of common councilmen now annually chosen.

WARDS.

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| Bassishaw and Lime Street, four each | 8 |
| Dowgate, Candlewick, Cordwainers, Cornhill, Queenhithe, Vintry, and Walbrook, six each | 42 |
| Bread Street, Bridge, Billingsgate, Broad Street, Cheap, Coleman Street, Cripplegate-within, and Cripplegate-without, Tower, Langbourn, Castle Baynard, Aldersgate, Aldgate, and Portsoken, eight each | 112 |
| Bishopsgate and Farringdon-within, fourteen each | 28 |
| Farringdon-without | 16 |
| (In all) | <hr/> 206 |

By a resolution of the court of aldermen, passed 23rd November, 1710, and another of the court of common council, passed 4th June, 1716, both being declaratory of an ancient custom, no person can be elected common councilman for any ward, who is not a householder of that ward; but no particular length of residence is required, and the office is not vacated by discontinuance of residence (*i*). Before taking their seats in the court, the common councilmen must, besides the oath prescribed by the 9 Geo. IV. c. 17, take the following:—

“Ye shall swear, that ye shall be true to our sovereign Lady, the Queen that now is; and readily come when ye be summoned to the common council of this city, unless ye be reasonably excused; and good, and true counsel

(*g*) 2 Rep. M. C. 16.

(*i*) 2 Rep. M. C. 34.

(*h*) 8 May, 1840.

ye shall give in all things touching the common weal of this city, after your wit and cunning; and that for favour of any man ye shall maintain no singular profit against the common profit of this city; and after that ye be come to the common council, ye shall not from thence depart, till the common council be ended, without reasonable cause, or else by the mayor's license: and also, that all secret things that be spoken or said in the common council, the which ought to be kept secret, ye shall in no wise disclose."

These ward representatives, with the mayor and aldermen, constitute the court of common council, which is styled the "Court of the Lord Mayor, Aldermen, and Commoners of the City of London in Common Council assembled."

The aldermen for a long time claimed a negative vote in all the proceedings of this court; and a majority of the aldermen for the time being was therefore considered necessary for the validity of their proceedings; a notion which, though erroneous, is entertained by some at the present time(*k*). This negative power of the aldermen was always much contested, and the sanction of it by the city election act(*l*) was violently resisted at the time; and after many contests, both in the common hall and common council, the clause was at length repealed(*m*). To make up a court, there must now be present, the lord mayor, or his *locum tenens*, (being an alderman who has passed the chair, appointed for the purpose by the lord mayor, under the mayoralty seal,) at least two other aldermen, and a sufficient number of common councilmen to make up a *quorum* of forty, without reckoning the lord mayor. It seems doubtful, whether, strictly speaking, a majority of the existing members of common council should not be present; but this is never enforced in practice. Whilst the separate consent of the

(*k*) *Id.* p. 69.

(*l*) 11 Geo. I. c. 18, s. 15.

(*m*) By 19 Geo. I. c. 8.

majority of the common councilmen present was necessary for every resolution, it is possible that, as in the case of the aldermen, a majority of the whole number were required to be present. It appears, however, that in strictness there should still be at least forty commoners present(*n*): and in the journals, the number of aldermen and commoners present at a division are always distinctly stated(*o*), though the common practice is to require only the presence of forty commoners and aldermen together, without reckoning the lord mayor(*p*): and the votes of the majority bind the corporation(*q*). By one of the standing orders(*r*), the keeper of Guildhall is directed to take down the names of the members as they enter the court, distinguishing those who are present when the lord mayor takes the chair, and remain until a court is formed; and the names of the members so taken, are printed upon the minutes of the proceedings. The recorder, chamberlain, judges of the sheriffs' courts, common serjeant, town clerk, and clerk of the court(*s*) attend, with other officers, whose presence may be required in the course of the business, and have seats at the table.

There is generally a motion made every year, which passes nearly as a matter of course, that the sheriffs should be allowed to take their seats on the bench; but no one except the lord mayor, aldermen, and common councilmen is entitled to vote, nor, unless called upon, to speak. The public are ordinarily allowed to be present at all these proceedings, except the divisions; but, as in the House of Commons, any member may enforce the exclusion of strangers, though it is very unusual to do so(*t*).

(*n*) 2 Burr. 1019; Bacon's Abr. Corporations, E. 7.

(*o*) 2 Rep. M. C. p. 71.

(*p*) *Id.* p. 14.

(*q*) See *Cotton v. Davies*, 1 Str. 54.

(*r*) 56 S. O. passed 16 March, 1837.

(*s*) This office was, until very recently, performed by the junior attorney of the mayor's court, but a vacancy having occurred in that appointment, it is now filled by one of the town clerk's clerks.

(*t*) 2 Rep. M. C. p. 69.

The court of common council is both a legislative and an executive body. Every corporation aggregate has necessarily the power to make by-laws for their better government (u),—a power amply confirmed to the new town councils, by the Municipal Corporations Act (x). London, however, had, by ancient custom, a more extensive privilege in this respect than any other corporation, which was confirmed by charter of 3rd June, 15 Edw. III., enabling the mayor and aldermen, with the assent of the commonalty, “where any customs theretofore used and obtained, proved hard or defective, or any matters newly arising within the city needed amendment, and no remedy had been previously provided, to apply and ordain a convenient remedy, as often as it should seem expedient; so that the same were agreeable to good faith, and reason, for the common advantage of the citizens, and other liege subjects sojourning with them, and useful to king and people.”

This, like most of the city charters, being merely declaratory of their former rights (y), in all legal proceedings where an act of common council is pleaded, this legislative power is set out (z) as a custom confirmed by act of parliament, though the charter in question also sometimes appears upon the pleadings, being generally recited in the acts of common council. The object of such a mode of pleading is, to rest the legislative power of this court on some higher foundation than a mere charter; which could not of itself confer any power of making laws, beyond that which is incident to every corporation; but which, whatever construction might be put on the express power it gave to make by-laws, would

(u) 1 Bl. Com. 476; *London v. Vanaker*, 5 Mod. 439; *Norris and Stap's case*, Hob. 211; 10 Co. 31 a; Com. Dig. tit. Franchise, F. 16; 1 B. & P. 100; Dougl. 158; 2 M. & P. 164.

(x) 5 & 6 Will. IV. c. 76, s. 90.

(y) *Waggoner's case*, 8 Co. Rep.

121 b; Norton's Comm. Bb. 2, ch. 27, in note; *Hutchins v. Player*, O. Bridgman, 272; *Robinson v. Watkins*, Skinn. 371; *Chamberlain of London v. Compton*, 7 D. & R. 598.

(z) *Id. ib.*; *City of Colchester v. City of London*, 1 W. Jones, 240.

not exclude a more extensive power inherent in the body to which it is granted (*y*).

It has been laid down as a general rule, that every by-law by which the benefit of the corporation is advanced, is for that reason good; such common benefit being the true touchstone of all by-laws (*z*): and therefore by-laws may be made, imposing fines for not attending courts (*a*), or not accepting the office of mayor (*b*), alderman (*c*), or sheriff (*d*), or for resigning the office of common councilman (*e*); it being necessary that every corporation should have a coercive power, to compel their own members to submit to their constitution (*f*). So also, where the elections to civic offices are not regulated by act of parliament, charter, or uniform immemorial usage, the whole mode of election may be settled by by-laws (*g*); the number of electors restrained, and qualifications fixed (*h*). But such by-laws cannot strike off an integral part of the elective body (*i*), or narrow the description of persons declared eligible by charter (*k*), or delegate the elective franchise wholly to a stranger (*l*), or do any act which would necessarily create a forfeiture (*m*).

The corporation of London, however, which is not constituted under any general charter or act of parliament, but which, on the contrary, is always set forth as existing "from time immemorial, under various names

(*y*) *Rex v. Westwood*, 4 B. & C. 781; Bacon's Abr. tit. By-laws, A.

(*z*) Per Holt, C. J., in *London v. Vanaker*, Carth. 482.

(*a*) 7 B. & C. 838.

(*b*) *Ante*, p. 16.

(*c*) *Ante*, p. 28.

(*d*) Bacon's Abr. By-laws, A.; Salk. 142; Carth. 480; 5 Mod. 438.

(*e*) Lutw. 402—5.

(*f*) Per Holt, C. J., in *London v. Vanaker*, *sup.*

(*g*) *Barber v. Boulton*, 1 Str. 314; *Butler v. Palmer*, 1 Salk. 190; *Newling v. Francis*, 3 T. R. 189; and

see *Rex v. Westwood*, 4 B. & C. 781.

(*h*) *Case of Corporations*, 4 Co. 77 b; *Rex v. Spencer*, 3 Burr. 1827; *Rex v. Ashwell*, 12 East, 22.

(*i*) *Id. ib.*; Jenk. 273; *Corp. of Colchester*, 3 Buls. 71; *Workingham v. Johnson*, Rep. Temp. Ld. Hard. 284; *Rex v. Head*, 4 Burr. 2515.

(*k*) *Id. ib.*; *Rex v. Tunwell*, 3 Dougl. 207; and see *Tucker v. Rex* (in error), 2 Bro. C. C. 304; *Newling v. Francis*, 3 T. R. 199.

(*l*) See cases cited *sup.* n. (*i*).

(*m*) 1 T. R. 118.

of incorporation," have, by force of these general principles of law, as well as by custom, confirmed by the charter of Edward III. before referred to, a power of remodelling their own constitution, different from any other body in the kingdom. Thus it was an ordinance of the common council which fixed the present constitution of that court (*n*): and similar ordinances have changed the nature of the office of alderman, by first making the election annual (*o*), and afterwards declaring the office one for life (*p*). So the qualifications of the citizens have been fixed by different by-laws (*q*); and the whole complicated machinery of municipal government is continually undergoing reform, under the sanction of the civic legislature, without the aid of any further interference; and this peculiar feature in the constitution of the corporation of London, now placed in the isolated position in which it stands in regard to every other in the kingdom, is a matter deserving of the most serious care of the members of the corporation. Notwithstanding the prevalent feeling against independent municipal government, the only important instance in which the corporation of London allowed its constitution to be interfered with by parliament (*r*) has met with condemnation from the parliamentary commissioners; and the exercise of the internal legislative functions of the corporation itself pointed out as the preferable remedy (*s*); and yet the very act of parliament alluded to is the principal impediment in the way of the civic reformers. Sir Orlando Bridgman, Ch. J. C. B., in a very elaborate judgment, existing in his own MSS. (*t*), expressed himself in the strongest terms on the propriety of giving the most extended

(*n*) Ord. 7 Ric. II. *ante*, p. 38.

(*o*) *Ante*, p. 26.

(*p*) *Id.*

(*q*) *Post*, ch. V.

(*r*) 11 Geo. I. c. 18.

(*s*) 2 Rep. M. C. p. 8.

(*t*) *Player v. Hutchins*, the ori-

ginal judgment of which, in Sir Orlando's handwriting, Holt, C. J., mentions as being in his own possession, in *Mayor of Winton v. Wilks*, 2 Lord Raym. 1129; a copy is now preserved in the Hargr. MSS. No. 56.

construction to the common council's legislative power. "It is the foundation," he says, "of most of the ordinances in force in London for the government of the city, which would be shaken if you take away this pillar, and leave to London no more power touching by-laws, than you do to every ordinary corporation or company."

This power consists much more in being able to modify old laws and customs, than in enacting new ones: though in many of the old cases, great discrepancy is apparent in the decision of the courts upon the subject. It is well established that every town or city had, at common law, independent of any custom, a power to make ordinances or by-laws for regulating their streets, highways, or any such thing which was for their general good (*u*): and so with respect to corporations connected with trade, as the corporation of London, it was laid down by Lord Mansfield, that they may make by-laws to regulate, but not to restrain, trade, unless there be a particular custom to support them (*x*). On this principle it was established, that ordinances for regulating the trade of brokers and factors, compelling them to be free of the city, and submit themselves to the approval of the court of aldermen (*y*), and directing that all broad cloth should be brought to Blackwell-hall to be searched, that it might appear to be vendible and the stallage duty paid (*z*), and that every foreigner who sold goods usually sold by weight, should bring them to be weighed at the king's beam in the city under a certain penalty (*a*), were good by-laws: as are likewise by-laws restraining butchers and chandlers (*b*), brewers (*c*), or tavern keepers (*d*), from setting up in particular parts of the city; or prohibiting a dangerous

(*u*) 5 Co. Rep. 63.

(*x*) *Chamberlain of London v. Goodman*, 1 Burr. 16.

(*y*) See judgment of Sir O. Bridgman in *Player v. Hutchins*, Hargr. MSS. 56, p. 30.

(*z*) *Chamberlain of London's case*,

5 Co. 62.

(*a*) March. 15, 8. P.

(*b*) Sid. 284; March. *ib*.

(*c*) March. *ib*.

(*d*) *Id.*; Roll. Abr. 365, tit. By-laws, pl. 3, adj.; Bacon's Abr. By-laws, B.

trade within the city altogether (e); or limiting the number of taverns, alehouses, cars, &c. (f), in order to prevent their becoming a nuisance: for it seems clear that wherever any trade by its excrescence tends to a nuisance, and thereby proves of public inconvenience, it may be restrained by a by-law (g). Therefore it was held a good by-law, that no drayman or brewer's servant should be abroad in the streets with drays or carts after certain hours (h). In confirmation of this general power, the court of common council are empowered by act of parliament (i) to prohibit any trades and occupations which they may judge noisome or perilous in respect of fire. Where an act of common council was made for the ordering the companies of bricklayers and plasterers, in which it was ordained that the bricklayers should not plaster with lime, but with sand only, and that plastering with lime and hair should belong to the plasterers, and that those who broke this order should forfeit 40s., to be recovered by the chamberlain, it was objected, that this was not a

(e) *Id. ib.*; Ca. Temp. Ld. Hard. 405; And. 91.

(f) Sid. 284, *per Cur.*; Bacon's Abr. *nb. sup.*; Sir T. Raym. 288—9.

(g) *Id. ib.* Anciently, when trades were carried on more in markets than at present, the markets of London were all restrained by acts of common council to certain places; and fishmongers, butchers, poulterers, fruiterers, &c. were forbidden to sell but in those places. Sir O. Bridgman's judgment in *Player v. Hutchins*, cited *sup.*

(h) Act of Common Council, 15 Car. II., confirmed by *Bosworth v. Hearne*, 2 Strange, 1685. So also "there is the same reason for restraint of persons as places for public buying and selling, and times within which they should sell and buy, and trades with which they should meddle, and trades with

which they should not intermeddle: as that a dyer should be no clothier, nor a butcher a tallow chandler, without the aid of, and before the statute of, 5 Eliz., as the carmen, draymen, porters, cobblers, musicians, brokers, retailing brokers, carriers, watermen, and, generally, all other trades in the city, have had their regulations and restrictions from the common council and court of aldermen; and so, generally, men of all other trades and employments in the city, till they have been allowed to become brotherhoods, and afterwards to obtain charters with powers to choose governors and officers for regulation of their own mysteries, and subject, nevertheless, to the mayor and aldermen." Per Sir O. Bridgman in *Player v. Hutchins*, Hargr. MSS. 56, p. 30.

(i) 13 Car. II. c. 3, s. 21.

good ordinance, as depriving the bricklayers of a part of their rightful trade; but it was decided that the ordinance was good, not being in destruction, but for the ordering the traders, and no more in effect than a determination between the companies (*k*): and on the same principle, an act of common council, forbidding the bakers of white bread to make brown bread, *et à converso*, was held good by the Court of King's Bench, on the return to a *habeas corpus* (*l*). So, also, where the common council passed a by-law to compel joiners to be members of the Joiners' Company, it was held a good by-law without a custom to support it (*m*); but it has been since decided that these last species of by-laws are not valid as original enactments (*n*), being void at common law, as made in restraint of trade, though it would be otherwise had they been supported by a custom (*o*).

The statute 3 Hen. VII. c. 9, recites, that an ordinance was made in London, upon pain, that no freeman of the city shall go or come to any fair or market of the city of London, with any manner of wares, &c. to sell or barter, to the intent that all buyers and merchants should resort to the said city to buy, &c.: and makes the same void, because of the great damage likely to ensue from it (*p*).

This is sufficient to show the extensive power attributed to the legislative enactments of the corporation of London, when it was deemed necessary to have an act of parliament to declare void, what would undoubtedly now be so considered in itself: on the same ground that an act of common council, forbidding the sale or use of any but Thames sand, was declared void as creating a mono-

(*k*) *Bricklayers' v. Plasterers' Co.*, Palm. 395.

(*l*) *Archer's* case, cited by Sir O. Bridgman in his judgment of *Player v. Hutchins*, Hargr. MSS. No. 26, p. 48.

(*m*) *Res v. Ludlam*, 8 Mod. 267; *Wannell's* case, 1 Str. 675.

(*n*) *Chamberlain of London v. Compton*, 7 D. & R. 597; *Same v. Le Crew*, 9 B. & C. 52; and see *Robinson v. Grescourt*, 5 Mod. 104.

(*o*) *Res v. Harrison*, 3 Burr. 1322.

(*p*) *Viner's Abr. By-laws*.

poly (*q*); and on general principles of law, it is now well established that no by-law, as an original enactment, can so far interfere with the common or statute laws of the realm, as to alter the mode of election prescribed by charter or act of parliament, or the course of justice, by declaring, that a party in particular actions should not be allowed wager of law, essoigns, or protections (*r*); or impose the penalty of imprisonment, or forfeiture of goods or chattels (*s*), or declare that all bonds or deeds contrary to the provision of any by-law should be void (*t*). The above power, however, of remodelling any custom which proves hard or defective (*u*), enables the corporation of London, by calling into light any custom, however ancient or obsolete (*x*) it may be, provided they do not lose sight of the custom itself (*y*), to make by-laws or ordinances founded thereon, though they are opposed to the general law of the land: for being founded on a custom, they become immediately a part thereof. Thus the various customs of London relating to wills, executorships, orphans, apprentices, and trade in general, together with the practice of the city courts of justice, have been from time to time materially altered by this court, which it has been held may, by by-law founded on a custom, so far restrain trade as to confine it generally to freemen (*z*), or to oblige particular traders to be free of particular companies (*a*); or even create a monopoly in certain occupations, as those of porters and owners of carts, cars, hackney coaches, or Thames boats (*b*), &c., or inflict pecuniary penalties or imprisonment on those who infringe such

(*q*) Godb. 106, pl. 126; *S. C.* cited arg. Raym. 293.

(*r*) Godb. p. 107.

(*s*) *Wagoner's case*, 8 Co. 121, b.; Comb. 10; Bacon's Abr. By-laws, E.

(*t*) *Dayzell v. Peck*, Moor, 411.

(*u*) Charter of Edw. III., *ante*, p. 43.

(*x*) 7 Ric. II. *ante*, p. 6.

(*y*) *Clark v. Denton*, 1 Barn. & Ad. 92.

(*z*) *Wagoner's case*, 8 Co. 121, b.

(*a*) *Wannel's case*, 1 Str. 675; *Res v. Harrison*, 3 Burr. 1322; 8 Mod. 267.

(*b*) *Fazakerly v. Wiltshire*, 1 Str. 462.

laws and customs. And even though a corporation cannot make another corporation (such a power only belonging to the queen or the supreme legislature (c)), yet the court of common council may, for the regulation of trade, constitute a fraternity or company, as in the instance of the corn porters, made a company by by-law 18 James I. (d), and it would appear that such companies may have all the privileges of the other city companies; nor has this right and privilege of the corporation been tacitly abrogated by the usage of the companies applying for charters to the crown, as several of them exist at this moment with no other incorporation than that conferred on them by the city (e).

This court is invested, by various acts of parliament, with powers to make by-laws to carry such acts into effect, such as the Port of London Act (f); and in other cases provisions have been made by the legislature, as in the instance of the regulations of city elections (g), precluding the common council from interfering; but in none of these cases is the inherent legislative authority of this court absolutely destroyed, as it must necessarily revive either by repeal of the express provisions of the particular act of parliament which had controlled it, or avail wherever such provisions are inoperative or deficient. In other cases, the court of common council have a concurrent jurisdiction with the ruling bodies appointed by the legislature (h).

The common council have now an unlimited command over the funds of the corporation; it being required by an old standing order (i), that as often as there shall be occasion for disbursing considerable sums of money out of the chamber, this court shall be consulted, and their

(c) Bro. Corp. 45; 1 Rol. 512, l. 35; Bac. Abr. Cor. B.; 10 Co. 33 b.; 1 Salk. 192.

(d) *Id. ib.*; *Fazakerly v. Willshire*, 1 Str. 462.

(e) 2 Rep. M. C. p. 26; and see

post, p. 73.

(f) 10 Geo. IV. c. 124.

(g) 11 Geo. I. c. 8.

(h) 1 Geo. I. stat. 2, c. 57, s. 9.

(i) S. O. No. 2, February 11,

1675.

assent had thereunto : and no bill whatever, exceeding the sum of £100, can be paid without the previous consent of this court, and the date of the order consenting thereto, inserted in the warrant(*k*).

The annual statements of the produce and expenditure of the city's cash, and of the Bridge-house estates, ending respectively on the 31st December in each year, the statements of monies received and paid by the chamberlain for improving the navigation of the Thames, and the consolidated rate, and sewers rate accounts, ending on Michaelmas-day in each year, are also required to be presented at or before the first court in May following; a statement of the comptroller's charge upon the chamberlain of all the rents and revenues of the corporation for the year, and the chamberlain's statement of the arrears due on the last day of the year, must be presented at or before the first court in June; and these several accounts are printed and circulated amongst the members, by the second week in July(*l*). The several law officers are bound to deliver in at the first court after Lady-day and Michaelmas, their bills for business done by direction of this court, and the several committees, charged upon the city and Bridge-house cash, in order to be referred and reported upon, previous to being paid : and no bill or accounts of any law officer appointed by the common council for law charges or expenses incurred in his department, in respect of any business done previously to Michaelmas, in every year, which is not made up to that period, and delivered before the following St. Thomas's day, is entertained by the court.

This court has also the sole power(*m*) of ordering the application of the common seal, and consequently of the disposition of the corporate landed property; and in all matters relating to this subject, a petition must be presented by the applicant in court(*n*).

(*k*) 22 S. O. May 27, 1794.

1778.

(*l*) 18 S. O. 17 Dec. 1840.

(*n*) 2 Rep. M. C. p. 71; *post*,

(*m*) Resol. Com. Council, 3 Mar.

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This court also, by means of committees, exercises numerous other executive functions; and of themselves elect the common serjeant, the town clerk, the two judges, the prothonotaries, secondaries, and clerk sitters of the sheriffs' court, the clerk of the peace, the coroner, the remembrancer, two of the city pleaders, the bailiffs of Southwark, the clerks and brokers of the court of requests(*o*), the commissioner of the city police(*p*), the upper and under marshals and marshalmen, the clerk of the works of the city and Bridge-house estates, the masters of the city of London school(*q*), the surveyor of the port of London, the clerk to the harbour masters, the superintendent of the mooring chains, the commissioners of sewers(*r*), the clerk and assistant clerk and comptroller of the chamber, the assistant clerk and clerk comptroller of the Bridge-house, the officers of the six markets, the water bailiff, the common crier, and serjeants at mace, the sword bearer, and other officers of inferior importance.

Whenever any important office becomes vacant, a committee is appointed to examine into its functions and emoluments, and to suggest any alteration which may be deemed advisable(*s*).

Brembre's act, before referred to, provides that the common council should be assembled once a quarter, or oftener. There are now usually about twelve ordinary meetings of the court in the course of the year, of which a list, or calendar, is published by the town clerk at the commencement of every mayoralty. Besides these, the lord mayor has the power of calling a meeting at any time, which is generally done by a signed requisition of seven members; and the average number of courts altogether held in the course of the year, is thus increased to twenty-five.

The summonses, whether for ordinary or special courts,

(*o*) 5 & 6 Wm. IV. c. XCIV.

(*q*) 4 & 5 Wm. IV. c. 35, private.

(*p*) 2 & 3 Vict. c. XCIV. s. 3, *et*

(*r*) 19 Car. II. c. 3, s. 20.

seq.

(*s*) 2 Rep. M. C. p. 75.

are served upon all the members as far as it is practicable, and upon the different officers whose attendance is required.

The summons, in cases of elections, must be issued three days before, and name the time of the commencement of the election(*t*), and the election usually takes place on the fourth day. In other cases, no length of notice is required, but the courts are usually held on Thursdays, and the summons dated on the Saturday preceding. A list of the agenda is made out by the town clerk, which form what are called the orders of the day, and are mentioned in the summons; but these do not include the business relating to the affixing the city seal, or the reception of petitions, unless there be something of a special nature involved in it.

This court must, by a standing order, sit within an hour after summons, and if there be not by that time enough members to make a court of forty members, the meeting breaks up: but that number being complete, the business immediately begins by the clerk reading the proceedings of the last meeting, in order to rectify any mistake, omission, or inaccuracy therein; and if at any time it appears to any member of the court that the minutes have been incorrectly recorded, the subject must be taken into consideration prior to any other business(*u*). The proceedings have, however, effect from the moment of their taking place, no motion ever being made to confirm them (*x*). Then any business which requires the affixing of the common seal comes on, though not among the orders of the day. By a standing order (*y*), the reports from the committees for letting the city lands and Bridge-house estates, which, in fact, generally comprehend the greater part of this business, such as the grants of leases, &c., are to be taken into consideration before any

(*t*) 8 S. O. 27 March, 1778.

(*x*) 2 Rep. M. C. p. 70.

(*u*) S. O. 4, March 15, 1827,

(*y*) S. O. 5, March 15, 1827.

amended Aug. 7, 1835.

other business, unless the court be specially summoned, or the report from some other committee be already in the paper of business and undisposed of (z).

Then the lord mayor, if he think fit, may bring forward any business, not among the orders of the day, which has arisen since the list has been made out. But no motion upon any other matter can be made, unless by special leave of the court, without a previous notice, which may be given to the lord mayor or the town clerk, but which is commonly given publicly at a preceding meeting; but all petitions, when the personal attendance of the parties is necessary, are read previous to entering on the business of the day, except when the court is specially summoned (a).

After the rules have been complied with, the orders of the day are called on, the order of which the lord mayor has at this stage no power to change, except by consent of the court.

The proceedings are usually by motion, which is read and put by the recorder; seconded, discussed, and decided by a show of hands, unless a division be called for. The lord mayor has a vote, except in questions of adjournment. Since the statute 19 Geo. I. c. 8, before referred to, there is no distinction as to the votes of the different classes of the members constituting the assembly. It is believed (though there is some dispute on the subject) that the lord mayor may still prevent any motion from being put before the recorder has announced it; but after the recorder has announced it, the motion must be disposed of before any other business can be transacted.

However, the lord mayor may, at any time, dissolve the court by directing the sword bearer to take up the sword, and thus stop a motion of which he disapproves at any stage (b).

(z) 45 S. O. July 12, 1821.

(a) 16 S. O. March 15, 1827.

(b) See, *inter alia*, Min. of Com.

Council, 6 May, 1835; 12 May, 1835.

No member is allowed to speak more than once on one question, except in reply (c). But the lord mayor may speak when and as often as he pleases. The other aldermen have no precedence in speaking. The method of electing the several officers in this court will be described hereafter (d). In other respects, the routine of the proceedings is made to conform, in most respects, to that of the House of Commons. A by-law, or act, or ordinance (names signifying the same thing), is read three times. After the third reading, the town clerk puts the question that this act do pass and become a law of the city. It is generally, but not universally, committed before the third reading.

In many cases a committee is appointed to prepare the bill in the first instance. The law officers of the corporation are directed to be consulted on all cases when counsel's opinion is required (e), the recorder as on the part of the aldermen, and the common serjeant as on the part of the commoners, and the bill is usually drawn up by the city solicitor. Orders and resolutions are less formal proceedings; they are made at once, and they generally relate to matters not requiring any forms of legislation, and *bind only the members and officers* of the court, as such members and officers. By S. O. 24 (f), no proceeding or resolution of the court shall be rescinded or expunged otherwise than by motion, of which previous notice shall be given, and inserted upon the summonses delivered to the respective members of the court.

The previous question is always put on petitions and reports. It is also frequently moved, as in the House of Commons, by way of a form for preventing a motion from being put.

Petitioners, whether freemen or not, were, until very lately, upon their request, heard in common council,

(c) 43 S. O. 23 March, 1820.

(e) S. O. 3, 19 January, 1716.

(d) See *post*, p. 57.

(f) Passed 7 February, 1799.

either personally or by an agent, professional or otherwise; but this privilege is taken away by two new standing orders (g), by which the practice on petitions has been materially varied. By these orders, it is required that notice be given at the town clerk's office of all petitions and memorials intended to be presented to the court, at least two clear days previously thereto, and notice of the subject of such petition or memorial be printed, and sent to the several members, and that no petition or memorial be received by the court before three o'clock in the afternoon, and that no future petitioners or memorialists be permitted to address the court upon the subject matter of such petitions and memorials.

The minutes are taken and drawn out by the town clerk, and copied into the journals by the clerk of the court, who also serves the orders of the court.

Any member may move that the court be counted, and if forty members, including two aldermen, be not present, they must break up; but unless this motion is made, the court notwithstanding proceeds.

Any member may also move an adjournment, which is always put without discussion; but it seems that, technically, the lord mayor may prevent the question from being put, and thus detain the meeting by his own authority, as he may dissolve it without its own consent.

This seems to be the reason why he never votes on questions of adjournment. In fact, the adjournment appears to amount to a dissolution; for, at the next meeting, after an adjournment, the business is not, as a matter of course, taken up where it was broken off.

The proceedings of the court are regularly entered in the journals: the divisions, distinguishing the number of the aldermen from that of the commoners, are recorded there. These journals are kept by the town clerk, and are open, upon reasonable cause being shown, to the inspection of any freeman, without any charge; and they

(g) Passed 15 June, 1841.

may be searched on the payment of 2s. 6d., and extracts may be made on the payment of 8d. per folio. Indeed, it does not appear that, in practice, any reluctance exists to show them to any respectable applicant who can give any fair reason for his wishing to search, though there is a standing order (*h*) that no book, paper, or record of the corporation be shown by any officer of the court to a person not a member of the corporation, without leave of the court (*i*).

Minutes of the proceedings, when printed, are sent to every member of the common council, and to most of the municipal functionaries, and copies are preserved in the town clerk's office, and the city library, bound up and indexed.

Elections in this court are by open voting (*k*), and if there are more than two candidates, they are reduced to that number by show of hands; and when so reduced, the court must immediately proceed to the election of one, by poll, if demanded: the duration of the poll to be determined by the court at the time (*l*).

Three days' notice of the election we have seen (*m*) is required, and the time of the commencement of the election named in the summons; and no person not having been admitted to the freedom of the city two years, except entitled thereto by servitude or patrimony, can be elected to any place or appointment of emolument in the gift of the court, or any of the committees (*n*), or commissions: but the restriction as to time is generally suspended in the case of those offices which are bestowed upon barristers, as it was also on the election of police commissioner under the City Police Act.

Any person soliciting a vote, or declaring himself a candidate to fill any office or place in the gift of this court, before such office or place be actually vacant, is,

(*h*) S. O. 42, Feb. 24, 1820.

(*i*) 2 Rep. M. C. 71.

(*k*) Order, 12 Dec. 1833.

(*l*) 55 S. O. 16 March, 1837.

(*m*) *Ante*, p. 53.

(*n*) 26 S. O. 21 Feb. 1804.

by such conduct, deemed ineligible therefor; and any member soliciting a vote either for himself or any other candidate, is deemed ineligible to sit upon any committee or commission appointed by this court(o).

By another standing order(p), any person holding an office in the appointment of the court, or of any of its committees, vacates it by accepting the office of common councilman, and taking his seat as such: no person can be a candidate for an office, who has been a member of the court within three calendar months of the day of election, unless the vacancy have occurred since he has ceased to be a member(q): and where the officer elected has to give security, no member of the court can be security(r).

The common method of bringing a candidate before the court, is by petition; but in the cases of the common serjeant, and the judges of the sheriffs' courts, the candidates are nominated by some members of the court.

The lord mayor generally states the nature of the office at the time of election; and by a standing order passed in 1816(s), every person thereafter elected to an office in the gift of this court, is elected to fill such office till the second court after St. Thomas's day next after such election; at which court, a general election takes place every year, though the old officers are, with scarcely an exception, re-elected; and they are expected to be personally present, unless specially excused. The provision as to re-election does not, however, extend to the common serjeant, town clerk, or judges of the sheriffs' courts(t).

(o) S. O. 16 Dec. 1835.

(p) 9 S. O. 8 Dec. 1778.

(q) 23 S. O. 25 Nov. 1796, amended 15 March, 1827. This of course does not include the commissioners of sewers, under the 19 Car. II. c. 30, s. 20, who always

consist of the recorder and common serjeant, and the members of common council. 12 S. O.

(r) 105 S. O. 30 March, 1779; amended, 15 March, 1827.

(s) 27 S. O. April 4, 1816.

(t) 2 Rep. M. C. p. 38.

CHAPTER V.

THE CITIZENS OF LONDON.

It is unnecessary for our present purpose, to surmise what was the qualification of a citizen of London in the more early periods of its history. In all corporate towns this qualification was, before the late act of parliament (*a*), always settled by charter or prescription, and a mere residence was not necessarily sufficient (*b*). It has long been laid down that the freedom of the city of London can be acquired only by patrimony or apprenticeship, or by redemption from the court of aldermen (*c*),—a system which, during the more rigorous enforcement of the ancient Saxon institutions, had the effect of continually recruiting the civic ranks, either on the common principle of *hereditary* (*d*) *succession*, or from those who had an equally just claim, that of industry and residence, or on other grounds, sanctioned by an order of the superior branch of the civic legislature; and it was very early decided that this power of conferring the freedom of the city was wholly independent of the crown. Thus, a charter of Edward III. (*e*), granting to John Falcount de Luca, said to have been the first apothecary in England, all the liberties and immunities of a citizen of London, was decided not to make the grantee a citizen (*f*).

The freedom by apprenticeship or patrimony is equally

(*a*) 5 & 6 Will. IV. c. 76.

(*b*) 1 Barnardiston, 138; 1 Salk. 374; 1 Ld. Raym. 426; Carth. 503; Bac. Abr. Corporations, E. 6; 3 B. & C. 677; S. C. 6 D. & R. 590.

(*c*) 2 Brownlow, 286; 4 Inst. 250; 2 And. 276—7; 2 Bulstr. 189—190; 3 Keb. 225; 8 Co. 112,

b.; 4 Mod. 145.

(*d*) In several of the London charters the grant is made to the citizens, their *heirs* and successors, as in that of Henry I. *post*, tit. Sheriffs.

(*e*) Rot. Par. 32 Edw. III.; and 2 Brownl. 286—7.

(*f*) 8 Co. 126, b.

conferred on both sexes. Females are called free sisters; their freedom is, however, suspended during coverture, and is not transmissible to their descendants. The widow of a freeman is free by courtesy, but loses her privilege by a subsequent marriage.

All persons not free of the city, whether resident there or not, are denominated foreigners or strangers, as was originally the case at Rome (*g*).

Freedom by servitude is obtained by service for seven years under an apprenticeship indenture to a freeman or freewoman, which indenture must be properly enrolled at the chamberlain's office by the master or mistress, within the first year of the term. If the indentures be not enrolled, the apprentice may be discharged (*h*), but the enrolment may be enforced by either party, as may also every other act necessary to complete the freedom at the proper time, by summons from the chamberlain, who, in London, has a peculiar jurisdiction therein (*i*).

The apprentice must not be the son of an alien (*h*); the service must be for seven continuous years without intermission (*l*), or even for a longer term, if it be named in the indentures (*m*), and during the whole period to a freeman; and on proof, even after the freedom has been taken up, of a defect in any of the particulars, both the master and apprentice may be disfranchised and fined, and the master prevented from trading (*n*).

It is no objection to the indentures that the apprentice be married during the term; and if the freedom be refused, a *mandamus* lies to the court of aldermen to grant it (*o*). Although the indentures cannot be enrolled at all

(*g*) Cic. de Offi. 1, 12.

(*h*) Priv. Lond. 338.

(*i*) *Id.* p. 343.

(*k*) Act of Com. Council, 26 Oct. 16 Eliz.

(*l*) Priv. Lond. p. 345.

(*m*) *Id.* *ib.*

(*n*) *Id.* *ib.*

(*o*) *Townsend's case*, 1 Lev. 91;

1 Sid. 107; 2 Show. 154; *S. C. T. Raym.* 92. In *Nesson v. FincA*, 1 Ld. Raym. 383, the common serjeant told the court, that if the apprentice traded during the term, the chamberlain would not admit him; but this does not seem now to be acted up to. See 2 Rep. M. C. p. 120.

after the first year, it will not affect the service, and the apprentice is entitled to his freedom on the payment of a fine of 9s. 6d. It is not necessary, in order to obtain a title to the freedom, that the service should be performed, or the master reside within the city, though, as we shall see (*p*), it might be taken advantage of by the apprentice. On the completion of his service, the apprentice appears before the chamberlain, accompanied either by his master or some other freeman, who can, from his own knowledge, give the necessary evidence, or with a written declaration from his master, who is compellable by process from the lord mayor's court, to provide the requisite proof. The chamberlain examines strictly into the performance of the indenture, and the regular service, the master declaring either verbally or by a written paper, upon the oath which he took at the time of his admission into the freedom of the city, or some other freeman testifying to his own knowledge, that the apprentice has served duly, and complied with the indenture. If the chamberlain be satisfied, he administers the oath, and admits the claimant to his freedom. By an old act of common council (*q*) the chamberlain was bound to ascertain that the claimant had reached the full age of twenty-four. This law has become obsolete, and while it was in force, it seems to have been frequently dispensed with. It is, however, still required that the freeman should be of age.

By a late act of common council (*r*), the oath on being admitted to the freedom has been settled so as to meet the religious scruples of nonconformists, and any natural born subject, of any religion, can be now admitted.

The following is the form of the oath :—

"Ye shall swear that ye shall be good and true to our Sovereign Lady Queen Victoria; obeysant and obedient ye shall be to the mayor and ministers of this city; the franchises and customs thereof ye shall maintain, and the city keep harmless in that in you is. Ye shall be contributing to all

(*p*) *Post*, tit. Apprenticeship.

(*r*) 10 Dec. 1830.

(*q*) 27 Sept. 3 & 4 Will. & M.

manner of charges within this city, as summons, watches, contributions, taxes, talliages, lot and scot, and to all other charges, bearing your part as a freeman ought to do.

"Ye shall colour no foreigner's goods under or in your name, whereby the Queen or this city might or may lose their customs or advantages.

"Ye shall take none apprentices for any less term than for seven years, without fraud or deceit, and within the first year ye shall cause him to be enrolled, or else pay such fine as shall reasonably be imposed upon you for omitting the same; and after the term's end, within convenient time (being required) ye shall make him free of this city, if he have well and truly served you.

"Ye shall also keep the Queen's peace in your own person. Ye shall know no gatherings, conventicles, nor conspiracies made against the Queen's peace, but ye shall warn the mayor thereof, or let it to your power.

"All these points and articles ye shall well and truly keep, according to the laws and customs of the city, to your power."

In *Wannel's* case(s), the chamberlain returned to a *mandamus*, to admit an apprentice to his freedom, that London has time out of mind been a corporation, and consists of several societies, guilds, and fraternities of freemen of the city; and that no person could be a freeman of the city till he was free of one of those fraternities.

The Orphans Act(t) requires the master to bind his apprentice to the company to which he belongs; and various acts of common council have forbidden the chamberlain from admitting tradesmen to the freedom of the city, in any other company than that belonging to their particular trade: but by a *resolution* of the court of common council, passed 17th March, 1835, it was declared to be the opinion of the court, that persons should be admitted to the freedom of the city, without the intervention of the trading companies. This resolution was afterwards laid before the recorder and common serjeant, who reported that it would be inexpedient to pass it into a law(u): but it was afterwards resolved(x), that a list of persons applying to be so admitted, should from time to time be presented to the court of common council, and

(s) 1 Str. 675.

(u) See Minutes of Common

(t) 5 & 6 Will. & Mary, cap. 10,

Council, 24 Sept. 1835.

s. 6.

(x) 1st October, 1835.

their sanction therefor, obtained as occasion required; and by an act of common council, passed 9th March, 1836, reciting the first of the above resolutions, it was enacted, that "the apprentices of *such of the freemen of this city*, as are not free of any society, guild, fraternity, fellowship, or company of this city, shall, being bound before the chamberlain of this city, according to the form of the indenture of apprenticeship, and for apprentices of the city, and duly enrolled according to the custom of this city, at the expiration of the apprenticeship, be entitled to the freedom of this city."

In pursuance of these new regulations, it is now the common practice for the chamberlain to admit persons to the freedom of the city, without reference to the companies; the various acts of common council which prevent particular classes of persons from being admitted to the freedom in any other than particular companies, not being deemed to prevent the chamberlain admitting the candidate, without the intervention of any company at all.

It may, however, merit the serious attention of the corporation, whether this new system is altogether consistent with their charters and constitution. The chamberlain's return in *Wannel's case* (y), we have seen, expressly stated the old system to be a part of the constitution of the city; and whatever force may be attributed to the ordinances of the common council regularly and formally passed into laws, in order to alter and amend the civic institutions, it by no means satisfactorily appears how a mere *resolution* of the court can alter an essential part of the municipal constitution.

The formal act afterwards passed (z), will not much alter the question. That act, it will be seen, declares that the apprentices of such "*freemen of the city as are not free of any society*," &c., may be admitted to the freedom; and unless the resolution of March, 1835, has the effect of making the material alteration in the civic con-

(y) *Ante*, p. 62.

(z) 9 March, 1836, *supra*.

stitution which it professes to do, it is pretty clear that there can really be no such persons in existence as freemen of the city, not being free of any of the companies.

The subject is of the greatest importance to the corporation at large, and the author would have distrusted his own mere individual opinion thereon, had it not been supported by that of others, and even by many of the members of the corporation themselves.

All children, male and female, of a freeman, born after his admission, may claim their freedom at the age of twenty-one, when the applicant is required to produce at the chamberlain's office a copy of the father's admission to the freedom, and six compurgators, called vouchers, to identify him as the person he represents himself to be, on which he is admitted forthwith, and the entries are ever after evidence thereof (a).

Freedom by redemption or purchase is given in three cases :—

First, Where there has been a breach of the apprenticeship indentures, as by contracting matrimony, or not serving the full time. Second, Where persons, not aliens, are admitted by grace and favour, and as a mark of distinction for public services: or, Thirdly, Where the admission is by presentment of the chamberlain, or some person entitled by grant to confer a freedom. All these species of freedom are obtained from the court of aldermen, but if the party be an alien or alien's son, the assent of the court of common council is requisite (b).

The great majority of instances in which the freedom is obtained by redemption are, in fact, simple purchases. The chamberlain is directed from time to time by the court of aldermen to dispose of a certain number of freedoms by sale, and the purchasers are presented by the chamberlain to the court of aldermen; and on payment of the fees of the officers, and a sum of 5*l.* to the corpo-

(a) See *Collins v. Maule*, 8 Car. & P. 505.

(b) Ordinance, 5 Edw. II.; con-

firmed by letters patent, 12 Edw. II., and Ordinance, 20 Edw. II. Priv. Lond. 352.

ration, are duly admitted to their freedom. The freedoms in the gift of the various officers of the corporation are thus disposed of (c): on the 17th of March, 1835, it was resolved, in common council,—

“That all persons to be elected to a corporate office be compelled to be free of this city; and that all persons occupying premises, and carrying on any trade, business, or profession, within the city and its liberties, should be compelled to be free.”

In order to enforce the exclusive privilege of the retail sale, the first step is usually taken by the inquest of the ward in which the sale takes place. The inquest presents to the court of aldermen the name and residence of the seller. The names thus presented are transmitted to the chamberlain, with an order to summon the party, and proceed as he thinks fit. The chamberlain directs the clerk of the chamber to send a notice to the person, calling upon him to appear before the chamberlain to show cause why he should not be prosecuted at law.

This notice is served and signed by the yeoman of the chamber. On the appearance of the party, the foreman of the inquest attends also, and the case is inquired into. Unless the party be privileged, he usually requests time to complete (if possessing an inchoate right), or purchase, his freedom, or he consents to quit the city. The time is limited to two months, by two acts of common council, of 10th May, 1821, and 27th October, 1825. If the party do not appear, a second and third summons are served, and, if there be still no appearance, the chamberlain directs a prosecution in the mayor's court, for the £5 penalty, and usually by the two persons first named in the inquest. Any freeman, however, may commence this prosecution in the name of the chamberlain, and this without a presentment from the inquest; indeed, it is not certain that any person, free or not, might not use the name of this officer for the purpose, though it seems

(c). 2 Rep. M. C. p. 65.

(d) Priv. Lond. 352.

to be understood that the chamberlain would stop any proceeding instituted in his name by a person not free. The process having been used for the purpose of extorting money, by way of compounding the prosecution, two acts of common council were passed, in 1821 and 1825, by which the present preliminary method of hearing before the chamberlain was established, which every prosecutor must now follow. The effect of the chamberlain's giving time, is to suspend the prosecution altogether; antecedently to these acts, he could only give time as to prosecutions which he instituted himself (*d*).

All officers in the corporation are, as we have seen, necessarily freemen; and by one of the standing orders (*e*) of the court of common council, no person not having been admitted to the freedom of the city two years, except entitled thereto by servitude or patrimony, can be elected to any place or appointment in the gift of that court, or any of its committees, though the restriction as to time is generally suspended in the case of those offices, which are bestowed upon barristers (*f*).

The exclusive right of freemen of London to carry on trade within the city and liberties, has been rigorously enforced with regard to retail dealers, and seems to equally apply to the wholesale trade (*g*). No freeman, being a master artificer, can employ an artificer to do work under him within the city who is not free, unless the master have had, within twelve months, an apprentice, and obtain a license from the lord mayor or court of aldermen to employ non-freemen (*h*). So, also, none but freemen can legally act as brokers (*i*) in London.

The customs of London relating to orphans, wills, distribution of intestates' estates, masters and apprentices,

(*d*) 2 Rep. M. C. 120.

(*e*) 26 S. O. February 21, 1804.

(*f*) 2 Rep. M. C. p. 120, *ante*, p. 57.

(*g*) See *post*, Trade Regulations;

Sir O. Bridgman's judgment in *Player v. Hutchins*, Hargr. MSS. 56.

(*h*) Act of Common Council, 22 November, 1750.

(*i*) *Post*, title Brokers.

are confined to citizens; but it is immaterial whether the freedom be obtained by patrimony or service, or be a mere honorary gift (*k*).

An agreement on marriage, or an undertaking in the court of aldermen to take up the freedom of the city, is a valuable consideration, and the distribution of the personal estate will be governed by it (*l*); and this custom follows the person of the freeman wherever he reside (*m*).

Citizens of London are free, both for themselves and their property, from all ancient tolls and customs, which were in the hands of the crown at the time of the charter of Henry I., called in that charter "scot and lot, dane-guilt and murder, and toll passage, and lastage, and all other customs;" and in other charters called brid-toll, childwite, jeresgive, and scotale (*n*); and indeed a power is given to make reprisal in case of such toll being taken, upon any goods within the city belonging to the party levying the toll (*o*): but it has been solemnly decided, that this exemption extends only to freemen actually resident in the city (*p*). To obtain this exemption from toll, a document, called an exemplification, must be obtained from the town clerk, under the seal of the mayoralty, certifying the party to be a citizen, and a certificate from the parish minister and churchwardens that the claimant is resident (*q*).

Citizens are also exonerated from the city tolls collected at the gates (*r*), and from port dues; and this, whether they are residents or not (*s*).

Another privilege of the citizens of London is to be

(*k*) *Onslow v. Onslow*, 1 Sim. 18.

(*l*) *Frederick v. Sir John Frederick*, 1 Bro. P. C. 257; 1 Strange, 455.

(*m*) *Webb v. Webb*, 2 Vern. 110.

(*n*) Charters of 2 Henry II., and 11 Henry III., and 50 Henry III.; see 4 Inst. 252.

(*o*) *Id. ib.*

(*p*) *Corporation of London v. Corporation of Liverpool*, 1 Bos. & Puller, 522, in note; and see *Mayor of Lynn v. Mayor of London*, 4 T. R. 144; 1 Henry Bl. 216.

(*q*) 2 Rep. M. C. p. 120.

(*r*) See *post*, ch. VIII.

(*s*) 2 Rep. M. C. p. 120.

free from being impressed as sailors or soldiers; a privilege extended also to their apprentices (*s*). This privilege is confirmed by the first charter of Edward III., declaring that the citizens of London should not from thenceforth be obliged to go or send to war out of the city. The true reason, however, seems to be that the city of London being held in free burgage, the citizens were, according to the feudal system, bound only to defend their own walls (*t*).

By various charters (*u*) it is granted that the citizens of London shall not be impleaded without the walls of the city for any plea, and a citizen defendant may still plead to the jurisdiction of any of the superior courts (*x*), when it appears upon the face of the pleadings that the cause of action arose within the city, though such a plea is never looked upon very favourably by those courts; and if the fact of the defendant's being a citizen be then denied, the question is tried by the sheriff's certificate (*y*).

Formerly, as we have seen, the citizens of London assembled in one body in the general folkmote or hustings, to discuss the affairs of the city, consent to ordinances, and elect officers; but the only elective franchise, or municipal functions, now attached to the mere freedom of the city, are exercised in the wardmote, where freemen being *ten pound householders* (*z*), paying scot and bearing lot (*a*)

(*s*) *Ante*, p. 22.

(*t*) Wright's Tenures, 205; Bac. Hist. of Eng. Gov. 298.

(*u*) Charter of Henry I.

(*x*) Chitty on Pleading, p. 373; see *post*, City Courts; and Norton's Comm. p. 353.

(*y*) 10 Hen. VI. 10, Fortescue, cap. 32; 12 Co. 67.

(*z*) *i. e.* Jointly or separately occupying premises, for which the voter's share of the rent amounts to £10; 11 Geo. I. c. 18, s. 10, 11.

(*a*) The payments specified in the

act of parliament are the church, poor and scavengers, watch and ward rates; the orphans' tax, and such other annual rates as the citizens are liable to, (excepting parliamentary aids,) or thirty shillings per annum to all or one of them, s. 7, 8, 9; but receiving alms, or being discharged from the rates within two years disqualifies, except the discharge be by charter, writ of privilege, or act of parliament, s. 14; but a freeman is not deprived of his right to vote by not having paid the

when required in the ward for the previous twelve months, have the exclusive power of electing the alderman and common council of the ward.

For the election of an alderman we have seen a wardmote is summoned by the lord mayor's precept, within fourteen days after a vacancy occurs (*b*), and the lord mayor, or his *locum tenens*, being an alderman who has passed the chair, presides. For the election of common councilmen, a wardmote is annually held on St. Thomas's day (*c*), or, in case of death or resignation, as soon as a vacancy occurs; and the alderman of the ward presides.

The mode of conducting the election in case of a contest is settled by the City Election Act (*d*).

Any of the candidates, or two of the electors, may in such case demand a poll, and the presiding officer is directed to appoint and swear in poll-clerks, to take the poll in his presence, beginning on the day when it is demanded, or the day after, and proceeding from day to day until it is finished, not exceeding three days altogether (*e*). Upon adjourning the poll on each day, the presiding officer, in the presence of the candidates, or their agents, if desired, must seal up the poll-books until the next meeting, and after the poll is finished, the poll-books must be publicly opened and cast up: and the result declared within two days after. In case of a scrutiny being demanded, the candidates must nominate to the presiding officer any number not exceeding six voters for scrutineers, to whom, at the candidates' expense, signed copies of the poll-books are required to be delivered within six days. And the scrutineers or candidates must, within ten days after, deliver a list of objections with the grounds thereof to the presiding officer, who must deliver over to the other side signed copies of such objections, within three days from that time: and after the candidates, or their agents, have been heard in defence of the votes and objections, the result of the scrutiny must be declared within ten days, by the presiding officer at the place of election: and an omission in any of these points subjects the offender to a penalty of £200 over and above other penalties.

It is incident to a corporation to disfranchise, as well as to elect citizens, but no man can be disfranchised but for reasonable cause (*f*).

orphans' rate, if it be not demanded of him; *Warden v. Rout*, 7 Mod. 323.

(*b*) *Ante*, p. 28.

(*c*) Act of Com. Council, 28 Sept.

9 Hen. VIII. : 8 May, 1840.

(*d*) 11 Geo. I. c. 18, s. 1.

(*e*) *Id.* s. 4.

(*f*) 11 Co. 99, a.

If a man trade upon his own account within the seven years of his apprenticeship (*g*), he forfeits his right to the freedom, and so if he do not take the oaths in a reasonable time after he is qualified, it is a forfeiture of his right (*h*); and if he afterwards break that oath by doing any act essentially prejudicial to the existence of the corporation, as destroying or erasing their charters or muniments, preventing the election of mayor, &c., he thereby forfeits his franchise (*i*): but the merely threatening to do these things is no cause (*j*). If a freeman of London falsely represent his apprentice to have properly completed his servitude, and present him to the chamberlain for admission, both the master and apprentice may be disfranchised (*k*); so if a freeman connive with the apprentice of another freeman in embezzling his master's property, both may be disfranchised (*l*): but a freeman cannot, even by virtue of an ancient custom, be disfranchised for disobeying a mere act of common council, or acting contrary to a custom; as, for instance, suing for a debt out of the city courts (*m*), or using contemptuous words to the mayor (*n*), or an alderman, or other officer (*o*), or refusing to pay his proportion of the municipal expenses (*p*).

And this rule of law, it is presumed, would apply to an act of common council (*q*), by which it is enacted, that freemen dwelling a year out of the liberties, (except in case of sickness, or merchandizing, or other good cause, to be allowed by the court of aldermen,) should be disfranchised.

(*g*) *Messor v. Finch*, 1 Ld. Raym. 383.

(*h*) *Rex v. Jordan*, Com. Dig. tit. Franchise, F. 33.

(*i*) *Bagg's case*, 11 Co. 98 a., 99 a.; Carth. 176; Ray. 438; Sti. 479, 480.

(*j*) *Id. ib.*

(*k*) Act of Com. Council, 1 June, 18 Hen. VIII.; Priv. Lond. 344.

(*l*) *Id. ib.*

(*m*) Cro. Eliz. 33; and Dyer, 333, a.

(*n*) 11 Co. 96, 98, 99, a.

(*o*) 3 Salk. 425; *Clark's case*, 1 Vent. 327; 2 Lev. 200; Pal. 455.

(*p*) 1 Sid. 282; Com. Dig. Franchises, F. 33.

(*q*) 30 Aug. 6 Eliz.

CHAPTER VI.

THE COMPANIES.

VERY soon after the Conquest, we find, besides the *aldermanries* or *district guilds*, mention made of trading companies called *guilds* or *crafts* in this city, for the most part established for the purposes of trade, and the protection of their members—embracing at the same time both the objects of the modern friendly societies, and the trades unions. The earliest of these seems to have been the Weavers' Company.

As the city of London assumed a more exclusively mercantile character than it originally possessed, and most of the higher classes became gradually enrolled in some one of these guilds, they began to exercise in their collective capacity considerable influence over the management of civic affairs. The custom which we have before alluded to became regularly established, that no one could be admitted to the freedom of the city without being free of one of the companies (*a*); and the latter, even, as we have seen (*b*), succeeded, for a considerable time, in having the representatives of the whole city in common council chosen according to the mysteries or trades, and not according to the wards. Until the period of the accession of the House of Lancaster, however, the charters of the companies contain no words of incorporation, nor any expression, which can be considered as conferring on their members any distinctive municipal advantages. They were a portion of the community associated amongst themselves for peculiar purposes, but

(*a*) *Ante*, p. 62.

(*b*) *Ante*, p. 37.

still within the general incorporation of the "*communitas*" (c).

The new principles of law with respect to incorporations, which were more fully developed in the reign of Henry VI., had an immediate and direct operation upon the companies. The principal of them sought to obtain grants of incorporation, giving them perpetual succession, and a distinct legal and political existence, enabling them, as amongst themselves, to manage and direct their own affairs, as they do at the present day. This system, however, did not at first, nor, it is conceived, would it be considered at this day in anywise to diminish the authority of the main community, acting by the court of aldermen over these minor bodies; and in the city books are numerous instances of orders made, and resolutions passed, for their control and regulation, and for the interference of the court of aldermen (d). First, in respect to incorporation: they not only opposed the granting of charters by application to the crown, but even compelled companies who had obtained charters, contrary to the city franchises, to bring in such charters, and to refrain from acting under them until the allowance of the court of aldermen. The charter was required to be enrolled in the city books or registers; and in so doing, it is said that the court of aldermen act in a legislative or judicial, and not in a ministerial capacity; that is to say, that the enrolment is an acceptance of the new incorporation as a member of the city, and that, if this acceptance were withheld, the company would have no municipal rights or privileges. The charter of the Gardeners' Company expressly provides that it should be void, if certified to be inconvenient by the mayor and aldermen (e); and, undoubtedly, as it is not in the power

(c) 2 Rep. M. C. p. 25.

(d) See Returns of the various Companies to Orders of the House of Commons, of the date 1724-5; Northouck's Hist. of London, and

Maitland's ditto, vol. 1, p. 486; stat. 3 Hen. V. Cotton's Abr. p. 545.

(e) 2 Rep. M. C. London Comp. 320.

of the crown to constitute one individual a citizen (*f*) of London, much less could a mere charter grant municipal privileges to a whole body.

We have before seen that the corporation at large may, of itself, through the court of common council, create a fellowship or company (*g*); and though in some of these instances neither the right of having a livery, nor any other municipal privilege, was conferred, and the members were obliged to enrol themselves in some other company (*h*) in order to become free of the city, yet in that of the carmen, freemen of the company may at once be admitted free of the city (*i*); and there certainly seems to be no valid reason why any modern society, established in the city, should not be placed in exactly the same situation with respect to the corporation of London as the old societies, many of which were in existence as part of the civic constitution, long before any charters were conferred upon them.

According to the custom of the city, none of the guilds or companies possessed any proper internal power of coercive legislation, except with the assent or under the supervision of the general civic legislature (*k*).

The scanty relics of the records of the reign of Henry III. furnish some examples of this portion of the municipal constitution. Thus, in the 45 Henry III., certain ordinances or by-laws were made by the Lorimers, "*par comun conseil de tous, et par assentement de Sir Wm. Fitz-Richard, adongues maire de Londres, et des autres barons (l) de la cité;*" and in like manner the "*probi*

(*f*) 8 Co. 126 b.; *ante*, p. 59.

(*g*) *Ante*, p. 50; 1 Salk. 192.

(*h*) It does not seem to be generally known that, under the old system, the members of the Watermen's Company and fellowship porters were always free of other companies, and thus their privileges as liverymen were obtained.

(*i*) 2 Rep. M. C. 2nd part, 342.

(*k*) 2 Rep. M. C. p. 13.

(*l*) There cannot be the least doubt of the translation of this word here. The mayor and aldermen had always the exclusive jurisdiction in the matter, and the designation of the latter as "*des autres barons*" is quite sufficient to confirm the opinions before given of the meaning of the word "*barons*" in the charter of John. See *ante*, p. 15.

homines" of the cordwainers, made certain provisions or by-laws, 56 Hen. III., "*De consensu et voluntate majoris Londoniæ cæterorumque baronum ejusdem civitatis.*"

In the 11 Edw. I. certain ordinances were made by the "*prodes homes*," painters of the city of London, for regulating their trade, and in order that these regulations might be observed, they elected four guardians, or wardens, who were sworn before the mayor, and the other "*bones gentz*" of the city, to keep the same according to their power (*m*).

The appointments or confirmations in their offices by the mayor and aldermen, of guardians, rulers, surveyors, &c., as they were variously designated in the reigns of Edward I. II. and III., (entries of which occur,) show that the control of the city was not intermitted. In the reign of Edward III., probably in consequence of some general regulation, we find the names of the *probi homines* of twenty-five of the principal mysteries, who had been sworn before the court of aldermen to govern and rule the same; in the 39 Edward III. the court of aldermen passed an ordinance, by which this custom was established and confirmed. It was ordained, that all the mysteries should be faithfully ruled and governed, each according to its nature, and in such a manner, that no deceit should be found in any of their works or trades; that in each mystery, there should be chosen four or six, or more, or less, according to the needs of the mystery; which persons, so chosen and sworn, should have full power from the mayor to will and faithfully to do and perform the same. Any members of the mysteries refusing to obey the wardens, were to be imprisoned and fined (*n*). And it was specially declared to be a good custom for the court of aldermen to imprison a person for disturbing the election of a warden of a company, and refusing to promise not to do so again (*o*).

(*m*) 2 Rep. M. C. p. 13.

(*o*) Style, 78.

(*n*) *Id. ib.*

Whether under the above ordinance, or under the custom, the usage of presenting the wardens or other rulers to the court of aldermen upon their admission to office, in order that they might take the oaths of office before the court, now became fully established; and their presentments were regularly recorded in the city books, as a settled portion of the civic policy. The obligations of these officers may be further collected from their oath, which is entered as a city oath in the Custumal, and by which they swear "*to observe, and cause to be observed, the good rules and ordinances of the same mystery approved HERE by the court,*" and that all defaults therein against such rules and ordinances they will present from time to time to the chamberlain of the city. This "presentment" being evidently made for the purpose of regulating and confirming the same by the power of the municipal community (*p*), Lord Holt, therefore, in a case of disputed fine for not taking up the livery, recommended an appeal from the decision of the company, to the lord mayor and aldermen (*q*).

By the stat. 15 Hen. VI. c. 5, it was enacted, that the masters and wardens of all guilds, fraternities, and other persons in authority, should bring in their charters to be registered and enrolled of record before the justices of the peace in counties, and before the chief governors of the cities, boroughs, and towns, where such guilds and fraternities should be; and that from thenceforth no such masters, wardens, nor people, should make any ordinance to the disinheritance or diminution of the king's franchise, or of others, nor against the common profit of the people, nor none other ordinance of charge, unless the same should be first discussed, and approved, and for good and reasonable causes admitted, by such justices of the peace, or other chief governors, and before them entered of record; and afterwards by them revoked, or

(*p*) 2 Rep. M. C. p. 13.

(*q*) *Stationers' Co. v. Salisbury*, Rayn. 222.

repealed, if the same should be found to be not lawful or reasonable; and that this ordinance should last so long as it should please the king.

The statute 19 Hen. VII. c. 7, recites the substance of the statute of the 15 Hen. VI. and that the same statute having expired, divers and many ordinances had been made by divers and many private bodies corporate within their cities, towns, and boroughs, contrary to the king's prerogative, his laws, and the common weal of his subjects: it was therefore enacted, that no masters, wardens, and fellowships of crafts or mysteries, nor any of them, nor any rulers, or guilds, or fraternities, should make any acts or ordinances in disinherittance of the prerogative of the king, nor of none others, nor against the common profit of the people, but that the same acts or ordinances should be examined and approved by the chancellor, treasurer of England, or chief justice of either benches, or three of them, or before both the justices of assize in their circuits.

These statutes were in accordance with the previously established custom in the city of London; but from a carelessness on the part of the corporation, in enforcing the authority of the court of aldermen, the previous sanction of the latter to the by-laws of the companies came gradually to be dispensed with, and a simple enrolment of the by-laws after their confirmation by the judges was substituted in its stead; and even this is very rarely insisted on (r).

The same laxity on the part of the civic authorities, has, in other respects, diminished their control over the companies; as in the creating, granting, and regulation of the body called the livery, who are so essential a part of the civic constitution; and as regards the contributions of the different companies towards the civic expenditure, and the disputes and controversies between company and company, or their respective governors, and members

(r) 2 Rep. M. C. p. 26.

among themselves; but the customs and privileges of the city of London being declared by act of parliament to remain in force *usi vel abusi* (s), the power of the corporation at large over the different companies can by no means be considered obsolete.

In the case of *Rex v. Harrison* (t), it was pleaded that there are several guilds, companies, &c. in the city of London, which guilds, companies, &c. have used, and ought, to have the overseeing, correction, and government of the several persons using and exercising the several arts, trades, mysteries, and manual occupations belonging to such several societies, guilds, fraternities, fellowships, and companies, in the use and exercise of such arts, trades, mysteries, and manual occupations within the said city and liberties thereof; and that the said several societies, &c. for all the time aforesaid have used, and ought, and yet use and ought, to be under the order, government, and regulation of the mayor, aldermen, and commonalty of the said city for the time being, in common council assembled; and it was held by all the judges, that an act of common council of 20th June, 1727, compelling all butchers in London to be free of the Butchers' Company, was legal, and that the end of that by-law was to restore the original constitution of the corporation; that it was right and reasonable, and must have been the meaning of the custom, that each company should have the inspection of their own trade (u).

So in the controversy which occurred as to the power of the lord mayor to call common halls for other than election purposes, an opinion was given by counsel (x), that it is the duty of the proper officers of the several companies to whom precepts for summoning their respective liveries are sent, to summon them under pain of

(s) Charter of 7 Ric. II. *ante*, p. 11.

(t) 3 Burr. 1322.

(u) See the observations of Lord Mansfield and the other judges in

the above case, 3 Burr. 1328.

(x) Lord Loughborough, Wedderburne, Glynn, Dunning, and Nugent.

disfranchisement (*y*); and by an old order (*z*) of the court of aldermen, the master wardens of the several companies are required by their clerk to return to the chamberlain, once in every quarter, the names and residences of all persons admitted to the freedom.

There was always a great distinction between these mysteries, depending sometimes upon priority of foundation, or superiority in point of wealth. They were not indiscriminately called upon to advise on the civic affairs, but a selection was made from the *wiser or more sufficient of the mysteries* (*a*); and about the end of the reign of Edward II. the wealthier of the companies, or such as sent most members to common council, and paid the highest farms (*b*), were separated from the more indigent of the crafts: and on one occasion an act of common council was passed by members exclusively chosen from thirteen only of the former; a distinction which in time gave rise to the precedency of the great companies of London, afterwards reduced to twelve. The list of which, according to their precedency, is as follows:—

- | | |
|----------------|---------------------|
| 1. Mercers | 7. Merchant Tailors |
| 2. Grocers | 8. Haberdashers |
| 3. Drapers | 9. Salters |
| 4. Fishmongers | 10. Ironmongers |
| 5. Goldsmiths | 11. Vintners |
| 6. Skinners | 12. Clothworkers. |

There are nominally about seventy other companies in existence in the city, which are possessed of municipal privileges, some of them having a livery, and others not so; whilst others have gone into decay and become extinct (*c*). The recent regulations before alluded to (*d*),

(*y*) See Northouck's Hist. of London, lib. 1, ch. 26, p. 509. vol. 1, p. 33; see Northouck, p. 348.

(*z*) 13 June, 1738.

(*a*) *Ante*, p. 37.

(*b*) Herbert's Hist. of the Twelve great Livery Companies of London,

(*c*) See an account of them in the 2 Rep. M. C. 2nd part.

(*d*) *Ante*, p. 63.

authorizing parties to become free of the city independently of the companies, and the present total inactivity of those bodies with respect to the conduct of trade, even among their own members, if persevered in and ultimately held valid, must have a tendency to materially weaken the position of the companies in the corporation at large, as a part of the municipal government; and, consequently, the authority of the court of aldermen over them,—a result which can by no means be desirable under existing circumstances. It may, nevertheless, however, admit of considerable doubt whether every tradesman within London has not still an inchoate right to be admitted a member of that particular company having the superintendence over his trade. These companies are not voluntary societies, consisting of persons chosen by voluntary consent; nor can the admission of members, as in the corporation at large, be considered to be settled by prescription, and confined to persons possessed of particular qualifications, as apprenticeship or patrimony: on the contrary, the charters of all the incorporated companies expressly state them to be composed of the *working members* of the different trades or mysteries which they represent; and further, in many instances requiring all persons in such trades, within certain limits, to become members thereof (e). In *Wannel's* case, it was expressly laid down, that when an act of common council required all joiners in London to take up their freedom in the Joiners' Company, under a certain penalty, a *mandamus* would lie to compel the company to admit them (f).

The higher companies have many of them provided against the chance of indiscriminate admission, by imposing heavy fees thereon; but it may be also doubted whether these payments could, at this day, be enforced

(e) See *post*, Trade.

(f) 1 Str. 675; and see *Res v. Ludlam*, 8 Mod. 270; *Res v. Har-*

rison, 3 Burr. 1328; *S. C.* 1 W. Bl. 372; *Green v. Durham*, 1 Burr. 131.

in a court of law, wherever the *primâ facie* right to admission is established.

By an old statute (*f*) it is enacted, that no masters, wardens, or fellowships of crafts [or masters (*g*)], or any of them, nor any ruler of fraternities, shall take of any apprentice, or any other person or persons, for the entry of any apprentice into their fellowship, above the sum of 2*s.* 6*d.*, under the penalty of £40 for every offence; and by a subsequent statute (*h*), the same penalty is inflicted on such masters, wardens, &c. "exacting or taking of any such apprentice or journeymen, or any other occupying for themselves, or of any other persons for them, after his or their years expired, any sum of money, or other things, for or concerning his or their freedom or occupation, otherwise, or in any other manner, than is before recited; and it has been repeatedly decided that a by-law that any person *not otherwise entitled* to the freedom should be admitted a member of a public corporation, upon payment of a certain sum, is void, as an essential alteration of the constitution of the corporation (*i*). Much more, it is conceived, would the system adopted by many of these corporations, which are expressly established for so important a purpose as the protection of trade, be held bad, by which the freedom is sold to persons wholly unconnected with the trade or mystery they profess to represent.

(*f*) 22 Hen. VIII. c. 4.

(*g*) *Qy. Mysteries.*

(*h*) 28 Hen. VIII. c. 5.

(*i*) *Res v. Breton*, 4 Burr. 2260;
City of London's case, 8 Co. 126 b.;
see also *Res v. Bird*, 13 East, 384.

CHAPTER VII.

THE LIVERY.

IN the greater companies there existed from an early period, by usage and custom, two classes of freemen; the upper class, comprehending probably the masters, who were entitled to wear the *livery* or *clothing* of the company, and the freemen or yeomanry at large, mostly consisting of the workmen. Some companies possess a livery by prescription; and others by order of the court of aldermen; who, it is considered, have still the sole regulation of the mode of granting the livery (a). Indeed, after the reversal of the judgment of forfeiture in the *quo warranto* case, it was deemed advisable to hold a court for the express purpose of restoring the livery, and an order was made that all such as were on the livery at the time of the judgment, should be restored; which order, the masters, wardens, and assistants of the several incorporations were forthwith to put in execution; and the several clerks of the companies were ordered to enter the same in their respective books (b).

The power of calling to the livery has always been vested in the court, or ruling body of the company. The livery being onerous as well as honorary, the courts or ruling bodies had and have power of compelling the freemen to take up the livery; and if their own powers are insufficient, they may apply to the court of aldermen, who, calling the recusant before them, may commit him to prison, usually to Newgate, or fine him if he will not obey; and this power has been repeatedly declared

(a) 2 Rep. M. C. p. 27.

(b) Rep. in Guildhall, 7th Octo-

ber, 1688; Maitland's Hist. of London, vol. 1, p. 485.

to be legal (c). The constitution of the companies, and the qualification for the livery, were such, as gradually to draw all, or by far the greater number, of the superior or bettermost part of the citizens into this class (d).

The Court of Queen's Bench takes judicial notice of a liveryman, and the nature of his office, and that he who comes into a company, agrees to incident charges and duties (e).

By an order of the court of aldermen, dated 27 July, 1697 (f), it is directed, "that no person should, for the future, be called to take upon himself the livery of any of the twelve higher companies, who was not possessed of an estate of £1000; or of those of the inferior companies, unless he was possessed of an estate of £500." In the case of the *Vintners' Co. v. Passey* (g), this order was pleaded and demurred to, and was afterwards given up, on the ground that it was not known what authority the lord mayor and aldermen had to make the order.

In *Taverner's* case, which related also to the Vintners' Company, it had long before been decided that a fine of £31 13s. 4d. payable on being admitted a liveryman was valid (h); and in *Passey's* case it was confirmed (i).

It is probable, that those only who were entitled to the livery or clothing of the companies were selected for the ruling body, out of which representatives were exclusively chosen; and that these are the *probi homines* mentioned before. Various ordinances were made by the civic authorities on this subject; and at length, after an ineffectual attempt on the part of the common council to confine the power of electing the mayor and sheriffs to themselves, and the master and wardens of the com-

(c) 2 Lev. 200; *Stationers' Co. v. Salisbury*, Comb. 221; *Grafton's* case, 1 Mod. 10; *Clark's* case, 5 Mod. 156, 319; 12 Mod. 113; 2 Keb. 555; 2 Com. 24; Salk. 349, S. C.

(d) 2 Rep. M. C. p. 27.

(e) *Clark's* case, Salk. 349.

(f) Rep. No. 101, fol. 310.

(g) 1 Burr. 235.

(h) Raym. 447.

(i) 1 Burr. 238.

panies only (*k*), it was a few years after enacted (*l*), that the master, wardens, and *honest men* of the several mysteries of the city, shall come in their last liveries to the Guildhall, to the election of lord mayor, sheriffs, and other officers of the city; and none other but themselves and the members of common council should be present. The statute 11 George I. c. 18, s. 14, has now still further confined the powers of this court to liverymen of a year's standing; and that the qualification of the voter may the more accurately be ascertained, the lord mayor is empowered, at the request of the candidates, or their agents, where a scrutiny is granted at any election, to issue his *precept* requiring the master and wardens of the livery companies to cause their clerks to return two lists of the liverymen of their companies, for the use of the candidates on both sides, which lists are to be returned by the clerks on oath within three days (*m*).

The court consists of the lord mayor, or his *locum tenens*, who must have passed the chair, four aldermen at least, and such of the liverymen of the companies as are freemen of the city. This body elect the lord mayor, sheriffs, chamberlain, bridge-master, the auditors of the city and bridge-house accounts (*n*), and the four ale con-nors (*o*); and before the act 2 Will. IV. c. 45, they also exclusively chose the members of parliament for the city. They also sometimes offer remonstrance and advice to the other governing bodies of the corporation, and occasionally vote addresses to the crown or to parliament, but no distinctive privilege of address is now allowed them (*p*).

The full style of the court, is "a Meeting or Assembly of the Mayor, Aldermen, and Liverymen of the several Companies of the City of London in Common Hall assembled." By act of common council, 21 June, 7 Will. III., it is declared, that "the right of assembling common halls

(*k*) Act of Common Council, 7 Edw. IV.

(*l*) *Id.*, 15 Edw. IV.

(*m*) 11 Geo. I. c. 18, s. 6.

(*n*) 11 Geo. I. c. 18, s. 1.

(*o*) Rep. of Committee of Com. Council, 30th April, 1786.

(*p*) 2 Rep. M. C. p. 76.

for the election of lord mayors, sheriffs, and other public officers of the city, and the power to dissolve the same after such elections are made and finished, and not otherwise, is, and ought to be, in the lord mayor for the time being; but in practice, on these occasions, common halls are now called by a summons from the court of aldermen, or, in their default, by the lord mayor, and on all other occasions by the latter in the first instance. The day for election of lord mayor is 29th September; and for sheriffs, chamberlain, bridge-masters, and the other officers chosen in this court, Midsummer-day; or if that be Sunday, the day after; or as soon as a vacancy occurs (*q*). The summons is directed to the aldermen and several officers who are to attend, and to the masters and wardens of the several companies. The lord mayor is attended at the meeting by the recorder, common serjeant, pleaders, chamberlain, and other officers; all of whom, it is said, come as his attendants, and not as officers of the common hall; but at meetings for elections, the sheriffs, recorder, and common serjeant must attend to assist in the proceedings. The town clerk attends as an officer of the assembly, and prepares a list of *agenda*, and draws up the minutes of the proceedings, which are afterwards copied into a book called the "Precept Book," by the junior attorney of the mayor's court. In the few other cases besides elections, in which this body acts, the lord mayor presides, and puts the question, which is decided by a show of hands. Though all the liverymen who are free of the city, and even the members of common council (*r*), who are not liverymen, may attend this court, the elective franchise is confined to those who have been liverymen for one year; and no person is entitled to a vote who has not paid the livery fines, or who has received back such fines in part or in all, or has had any allowance in respect thereof; or within two years next before has

(*q*) Acts of Com. Council, 15 June, 1694, and 7th April, 1748.

(*r*) Act 15 Edw. IV.

requested to be, and has been, discharged from paying taxes, or within that time received alms (s): and every person, before he is admitted to poll, must, besides the usual oaths which may be administered to him, take the following oath or affirmation:—

“ You do swear, that you are a freeman of London, and a liveryman of the company of _____, and have been so for the space of twelve calendar months, and that the place of your abode is at _____, and that you have not polled before at this election. So help you God.”

The following is the mode of conducting the election of lord mayor, as laid down in *Rex v. Parkyns and others* (t).

“ Precepts having been previously issued by the lord mayor, by an order of the court of aldermen, and directed to the master and wardens of the several livery companies of the city, on the morning of the election day, the lord mayor, recorder, and aldermen, with the sheriffs and other civic officers, after having met together in the council chamber at Guildhall, and proceeded thence to church, return again to Guildhall for the purpose of the election. Immediately upon their return, the lord mayor, recorder, aldermen, sheriffs, and other city officers, being in their respective situations, on the place where the court of hustings is usually held, the town clerk dictates to the common crier a proclamation to the following effect:—‘ You good men of the livery, of the several companies of this city, summoned to appear here this day, for the election of a fit and able person to be lord mayor of this city, for the year ensuing, draw near, and give your attendance. God save the Queen.’ The recorder then advances towards the front of the hustings, and informs the persons of the livery who are assembled, that they, of old custom, know the cause of their assembly and meeting together, is for the purpose of returning two fit and able persons to the lord mayor and aldermen, for one of them to be chosen lord mayor for the year ensuing. The course then is, that the present lord mayor, recorder, and aldermen, retire to an inner chamber, and there remain, with the doors closed, until the result of the show of hands be brought to them, leaving the common serjeant, the sheriffs, the town clerk, and other city officers, on the hustings to carry on the proceedings. The common serjeant then states shortly to the livery, to the effect of what the recorder has before said, and to put them in mind of the order to be observed in the nomination; that is to say, that he, the common serjeant, will have to read over to them the names of those aldermen who have served the office of sheriff, and have not served the office of lord mayor: after which, the said names will be put to them separately by the common crier; and then, and not till then, they will be required to hold up their hands, for showing

(s) 11 Geo. I. c. 18, s. 14.

(t) 3 Barn. & Ald. 668.

upon which of the two ~~said~~ aldermen their nomination may fall, and these two aldermen are to be ~~then~~ returned to the mayor and aldermen to select the new lord mayor from. It is then open to any voter to propose a candidate for the office, (being, of course, properly qualified,) and the nomination proceeds; and it is customary to exhibit the names of the several aldermen on a board, as they are respectively named, in order to insure the names being known; and a show of hands being taken, the sheriffs declare the two names on which the majority has fallen."

The same mode of election is adopted with regard to all the other officers chosen by the livery. If the show of hands is not acquiesced in, a poll may be demanded by any of the candidates, or two of the electors (u); and in that case the presiding officers must appoint poll clerks to take the poll in their presence, in nearly the same manner as in elections in the wardmote, except that in the common hall the poll is open for seven days, exclusive of Sundays, and the scrutiny begins within ten days from delivery of the poll books, and must be finished within fifteen days after commencement, and the time for officially declaring the result is four days from the finishing the scrutiny (x).

The aldermen have sometimes voted and spoken in the common hall upon elections; but as the lord mayor and aldermen regularly retire into the inner chamber to receive the reports of the nominations or elections by the livery, the town clerk considers that they are not entitled to speak or poll in the common hall on such occasions. At a special court of aldermen, held on the 24th of June, 1697, it was resolved, that it was inconsistent with the dignity of their court, that any member should concern himself in the poll in the common hall, and it was agreed that none such should poll. The power of dissolving the court still rests solely with the lord mayor. The petitions sent up from the court have not the city seal; they are signed by the lord mayor, two aldermen, and twelve liverymen (y).

(u) 11 Geo. I. c. 18, s. 1.

(y) 2 Rep. M. C. p. 76.

(x) Sect. 4.

The livery have still their franchises preserved to them, in the elections of members of parliament for the city, in conjunction with the ordinary electors, under the Reform Act (z); but it is necessary, in order to vote as a liveryman, to have taken up the freedom of the city previous to the 1st of March, 1831, or have obtained it subsequently by servitude, or by *patrimony*, through a person qualified in one of those ways; and no liveryman can be placed upon the register, unless duly qualified (a) on the last day of July; and also resident within seven miles for the six months immediately preceding.

(z) 2 Will. IV. c. 45, s. 32.

(a) *i. e.* by being a liveryman of a year's standing; 11 Geo. I. c. 18, s. 14.

CHAPTER VIII.

THE PROPERTY AND REVENUES OF THE CORPORATION OF LONDON, AND THE MODE IN WHICH THEY ARE MANAGED AND DISPOSED OF.

It is incident to every corporation to purchase and grant, sue, and be sued, in their corporate name, in the same manner as individuals (*a*), and of every corporation aggregate to purchase and hold lands as well as goods and chattels in succession (*b*); but a corporation, being an invisible body, cannot manifest its intentions by any personal act or oral discourse: it is therefore necessary that it should have some other medium of signifying its acquiescence, which medium has always been required by our law to be a common seal, through which alone all corporations are said to speak and act (*c*).

Hence it follows, that, generally speaking, a corporation aggregate can only be bound by deed, sealed with their common seal (*d*), or by matter of record (*e*), and the corporate property cannot be assigned or charged but in one of these two ways. Therefore where a corporation passed a vote in common council, that if C. would alter the site of a house they would pay him £500, it was held not to be a binding resolution without the sanction of the common seal (*f*); and though this is not necessary to the validity of every corporate act (*g*), such as a mere command of the chief magistrate (*h*), or the appoint-

(*a*) 1 Bl. Com. 475; 2 B. & Ad. 840.

(*b*) Co. Litt. 46; 1 Bl. Com. 477.

(*c*) 1 Bl. Com. 475; Dav. 44, 48.

(*d*) *Id. ib.*

(*e*) 1 Salk. 192.

(*f*) *Mayor of Ludlow v. Charl-*

ton, 9 Car. & P. 242.

(*g*) *Attorney-General v. Davy*,

2 Atk. 212; *S. C.* West's Rep. of

Ld. Hard. 121.

(*h*) *Randle v. Dean*, 2 Lutw.

1497.

ment of an agent in ordinary services not affecting their property or title (*i*), as an auditor of the corporation accounts (*k*), or other servants, as cook, or butler, or bailiff to make a distress (*l*), yet even a bailiff could not be empowered to enter into lands for a condition broken, or otherwise (*m*), or an attorney appointed to appear in any court of record (*n*), except under the common seal; and therefore under the old system of conveyance by means of fines and recoveries, the property of the corporation could not be disposed of by levying a fine, as the parties to a fine were always compelled to appear in person (*o*); so that even matters of record are not an exception to the rule that the common seal is essential to bind the corporation.

The common seal of the city of London, according to Stow (*p*), was granted in the 9th year of Henry III. when coats of arms and distinctive seals had become general in this country, and the sixth charter (*q*) of that king confirms an agreement entered into by the citizens, under their common seal, with the Earl of Cornwall, for the purchase of Queenhithe.

The common seal of the city of London has been held to prove itself without any further evidence of the assent of the corporation, or the identity of the seal (*r*), which is not the general rule with other corporations (*s*); but if the want of authority of the corporation to the affixing the seal could be proved, it would, of course, not bind them (*t*); and if their full authority were proved to the

(*i*) 1 Ventr. 47, 48.

(*k*) Bro. Corporations, pl. 56; Jenk. 131.

(*l*) 1 Salk. 191.

(*m*) *Dumper v. Sims*, Cro. Eliz. 815, pl. 5; *S. C.* Bro. Corporations, pl. 49; 4 Co. Rep. 119 b.; *S. C.* Ventr. 48.

(*n*) Plowd. 91; Bro. Garrant. de Att. pl. 36.

(*o*) Co. Read. 7; Shep. Touch.

14, note (*w*), 22.

(*p*) Strype's Stow, lib. 5, p. 102; and see Harg. MSS. 277.

(*q*) Dated 26 February, A. R. 31.

(*r*) *Doe v. Mason*, 1 Esp. 53; *et vide Olive v. Guyn*, 2 Sid. 145.

(*s*) *Moises v. Thornton*, 8 T. Rep. 307.

(*t*) *Clapham v. Wray*, Ca. Temp. Will. III. p. 423; and 2 Mod. 423; 4 B. & Ad. 653.

adoption of any other than the ordinary common seal, it would be equally valid (u).

The formalities attached to the affixing the common seal of the city of London, however, would easily prevent any doubts occurring of its authenticity. It was formerly in the keeping of the court of aldermen, who had the power of applying it, subject, probably, to some control from the common council, one of the keys of the chest in which it was kept being in the custody of a commoner. On the 3rd March, 1778, however, the common council resolved, that the seal should be applied only by the authority of that court, and the aldermen assented thereto fourteen days after. An earlier resolution, of the 17th May, 1735, to the same effect, seems to have been unheeded.

There are now three keys : one is kept by the lord mayor ; another by the chamberlain, on behalf of the aldermen ; the third by the common councilman whose first election dates furthest back (x) : and whenever the seal is used, a docket is made for the court of the instrument to which it is affixed.

The business of the common seal belongs to the town clerk, whose duties will be noticed hereafter ; and in all cases where the seal is used, the matter is at first referred to the city lands committee, on whose report the order for affixing the seal is made.

Having the government and regulation of the whole district comprised within the city walls, the corporation were, at an early period, compelled to levy upon the inhabitants for the necessary expenses incident thereto ; and in a late inquiry into this subject (y), it was found to be an ancient usage and custom of the city of London, for all inhabitants and residents within the city and liberties, as well

(u) Shep. Touch. 57 ; Perk. s. 34 ; Godb. 439, pl. 506, *Bailiffs of Yarmouth v. Cooper*.

(x) 2 Rep. M. C. p. 71.

(y) Rep. of Committee of Council on County-rates, 16 June, 1840.

freemen as non-freemen, and as well strangers born as English, to be subject and contributing to the common charge for repairing the walls, highways, and other public charges, for the common good of the city; which custom was duly certified by the mayor and aldermen on the 25th February, 1629 (*z*), under the mayoralty seal to the city of Chester; and this is confirmed by charter (*a*) of Edward II., and practically adhered to by various acts of common council (*b*).

Many of the objects, however, for which this rate was formerly levied, have now been provided for by act of parliament, such as the bridges (*c*), the sewers (*d*), pavements, and lighting (*e*), and police (*f*): and to meet the ordinary expenses of municipal government, the city of London enjoy, in their corporate capacity, by virtue of various charters and acts of parliament, as well as by ancient custom, a very extensive revenue.

The chief part of this revenue, at the present day, is derived from the rents, quit rents, and fines payable for renewal of leases of landed and funded and other property, acquired from time to time by grant or purchase.

The corporation are said not to have begun to possess, in a corporate capacity, any productive private property in land till the time of Edward IV., when a charter (*g*) was granted, allowing the city to hold lands in mortmain, though the civic authorities certainly exercised a sort of jurisdiction over common and waste land in and about the city and elsewhere, for public purposes, long before

(*z*) Rep. 44, folio 152.

(*a*) Charter, 12 Edw. II.

(*b*) 22nd October, 1630; 17th April, 1632; 7th March, 1632; 2nd August, 1654; 7th June, 1681.

(*c*) London Bridge, 4 Geo. IV. c. L.; 7 Geo. IV. c. XL.; 7 & 8 Geo. IV. c. XXX.; 10 Geo. IV. c. CXXXVI.; 11 Geo. IV. c. LXIV.; 1 Will. IV. c. III.; 2 & 3 Will. IV. c. XXIII.; 4 & 5 Will.

IV. c. XIII.; 2 & 3 Vict. c. CVII.; Blackfriars Bridge, 52 Geo. III. c. CLXXXIII.

(*d*) 19 Car. II. c. 3; 7 Ann. c. 9; 11 Geo. III. c. 29; 33 Geo. III. c. LXXV.; 4 Geo. IV. c. XIV.

(*e*) 57 Geo. III. c. XXIX.

(*f*) 2 & 3 Vict. c. XCIV.

(*g*) 3rd charter of Edw. IV.

that period (*h*) ; but their ancient revenue, like that of the crown, was for the most part the produce of seignorial rights over the districts which were under their governance, and many of these rights they still retain, though their value is, from various causes, become very inconsiderable. Thus, as conservators of the Thames, the corporation receive rents for embankments, and fines for encroachments, &c., but this has ever been the subject of considerable dispute (*i*).

Under the charters of 1st Edward III., 1st Henry IV., and 1st James I., they are also entitled to other prerogative rights, such as the profits of felons' goods, under the names of *infangtheft* and *outfangtheft*, waifs, estrays, treasure trove, and deodands, &c., and the fines and forfeitures occasioned by certain offences committed within the city.

The charter 26 October, 23 Hen. VI. (*k*), grants to the citizens and their successors, all manner of fines, issues forfeited, redemptions, forfeitures, pains, and amerciaements for all trespasses, riots, insurrections, offences, misprisions, extortions, usurpations, contempts, and other misdemeanours, committed within the city or suburbs, wherever the offender is tried, together with the assessments, and levying of the same, and treasure trove in the city or suburbs ; and also waifs and strays, and goods and chattels of *felons* (*l*) and fugitives, for felonies committed within the city or suburbs, wheresoever adjudged ;

(*k*) Norton's Comm. ch. 9, lib. 1, p. 99.

(*i*) See *Rex v. Lord Grosvenor and others*, 2 Stark. 511. These rents are now carried to a separate account from the ordinary city estate, and form a fund applicable for the expenses of the conservancy of the river. In 1828, the number of persons paying them was 665, and the amount of the rental, £587 5s. above bridge ; and £697 3s. below.

2 Rep. M. C. 201.

(*k*) Preserved in the town clerk's office, and in Liber Albus ; and confirmed by charter in parliament, 20 Hen. VII. ; charter, 14 Car. I. ; and the inspeximus charter of Car. II. ; Norton's Comm. 281.

(*l*) This does not include the goods of a *felo de se*. *Rex v. Sutton*, 1 Saund. 269 ; 1 Sid. 420 ; 1 Vent. 32 ; 2 Kel. 526, 533 ; *S. C.* 2 Roll. Abr. 194, C, pl. 2.

and all merchandize and victuals forestalled or regrated therein or on the Thames, and the estreats of all recognizances or securities for good behaviour, or keeping the peace within the city and suburbs; and by another charter (m), the grant of fines for misdemeanours is extended to those inflicted by justices of the peace; but fines royal, or forfeitures incurred by the mayor, aldermen, and sheriffs, or any one of them, are expressly excepted (n).

In a recent case (o), it was decided that it was immaterial where the case was tried, provided the offender were resident or the offence committed within the city.

Both by charter and custom, confirmed by act of parliament, the corporation are entitled to a revenue from other sources, which are in the nature of compensation for the expenses occasioned in the management of the several departments out of which they are derived: among which are the tolls levied at the different city markets, under the name of pickage and stallage, street tolls, payable on non-freemen's goods passing in carts (p), duties called groundage and water-bailage, viz. 6d. for every vessel with corn on board, brought into the port of London, and one farthing per quarter on all corn so imported (q); a duty of 4d. per ton on all coal imported into London in lieu of metage duty on coals, and also on coals brought by the Grand Junction Canal (r), the duties on the metage of corn and fruits (s), one third of the

(m) Charter, 14 Car. I.

(n) *Id.*

(o) *Rees v. Mayor of London*, C. M. & R. 1. The net produce of fines, forfeited recognizances, and felons' goods within the city, is at present bestowed by courtesy upon the sheriffs. 2 Rep. M. C. 82.

(p) These tolls are by the 1 & 2 Vict. c. LXXXIII. local and personal, charged with the payment of interest, and ultimate discharge of

the monies raised by the Act for "making a New Street from Holborn Bridge in the City of London towards Clerkenwell Green." The amount collected for the year 1840 was £4,935.

(q) Charter, 3 Jac. I.

(r) Stat. 1 & 2 Will. IV. c. CLXXVI.; 1 & 2 Vict. c. CI.

(s) Charter of James I. This duty is always returned to the free corn factors. *Cocksedge v. Fanshew*,

profits of gauging (*t*) wine, spirits, oil, and other gaugeable articles, and of stamping weights and measures (*u*), the license and admission duties paid by brokers, called brokers' rents (*x*), and the profits of the sale of freedoms and offices, and other casual receipts, such as for licensing carts, drovers, the profits of drifts and strays on the Thames, fees at the police offices, &c.

Besides the revenues derived from these different sources, various funds have been from time to time placed under the control of the corporation by act of parliament, for the support of the police, and other purposes of municipal government. Some of which, as the funds for building and making approaches to London and Blackfriars bridges, and for improving the navigation of the Thames, arise from local dues or tolls upon merchandize or shipping, or are made up out of the corporation property itself, and will be all noticed in their proper places; but others are in the nature of a general contribution from the inhabitants, and require therefore to be separately treated of in the next chapter.

The property described in this chapter is, however, the only part which is really at the disposal of the corporation, and is placed under the management and control of the committee of city lands, of the court of common council, and of several officers acting in unison with them, whose duties and functions will be hereafter discussed.

The landed property of the corporation is usually let on twenty-one years' leases, containing all the usual covenants to pay rent, repair, &c., as well as a covenant not to assign without license, and likewise a covenant that the comptroller (who is the conveyancing solicitor of the corporation) shall prepare all assignments of leases: and the observance of these covenants is further secured by

1 Dougl. 119; Act of Com. Council, Car. I.

12 July, 1785.

(*t*) Charters 1 Henry VII. and 1

(*u*) 2nd charter of 7 Hen. VIII.

(*x*) 57 Geo. III. c. 60.

the usual proviso for re-entry (y). These covenants were very recently the subject of discussion, but no alteration seems to have been adopted. No leases can be granted by the corporation until the names and residences of the proposed lessees have been first printed and circulated in the usual summonses of the court of common council, with the description of the property intended to be leased, the term of years proposed to be granted, and the rent and amount of premium, if any, to be paid, and the rent at which they are then, or were last, let, except in such cases where premises are let by public tender, or under covenant of renewal (z).

The applicant for a lease is usually required to present a petition to the court of common council, who generally refer it to the committee of city lands (a), and make an order according to their report. On the common seal being applied, a docket is made for the use of the court of the instrument to which it is affixed (b).

The court of common council, we have seen (c), exercise also great control in various other respects over the property of the corporation. They have the appointment of all tradesmen and artificers employed by the corporation (d), and the hearing of every petition having a tendency in any way to affect the corporate funds, or any contract or engagement relating thereto (e); and all such questions must be previously noticed in the summonses of members (f).

There is also a committee, called the *coal, corn, and finance committee*; who, in addition to their other duties, keep a watch on the state of the finances of the corporation, and report the same from time to time to the court of common council (g); and no extraordinary work can

(y) Rep. of Committee of Com.
Council on Office of Comptroller,
27th May, 1841.

(z) 54 S. O. 8th December, 1836.

(a) *Ante*, p. 51, *et seq.*

(b) 2 Rep. M. C. p. 71.

(c) *Ante*, p. 50, 51.

(d) S. O. 19, February 14, 1793.

(e) 20 S. O. 30th May, 1793.

(f) 27 S. O. 31st May, 1805.

(g) 2 Rep. M. C. p. 74.

be undertaken, which may incur expense, whereby the funds of the corporation may be in any manner charged or affected, until the expense has been first submitted to them, in order to report on the means of carrying the same into effect (*h*). The same regulation is made with regard to objects of charity, or extraordinary grants for other purposes (*i*).

(*h*) 49 S. O. 15th March, 1827.

(*i*) 34 S. O. 25th April, 1816; amended 1st June, 1832.

CHAPTER IX.

THE LOCAL RATES AND TAXES.

ONE of the oldest tests of the rights of citizenship recognized by the English law, is that of being in scot and lot, or paying according to one's ability towards the common expenses (a); and in London, as elsewhere, this general contribution was insisted on at a very early period.

The ancient free guilds which preceded our present wards were, as we have before seen (b), so called because all the members contributed to a joint stock for their mutual protection and comfort; and by the articles agreed to by the corporation of London in the conference with the Crown, in the reign of Edward II. (c), it was provided, that all persons being in the liberty of the city, and enjoying its liberties and free customs, and all non-resident freemen carrying on trade within the city, should be in scot and lot, and share or partake in all burthens for maintaining the corporation, on pain of disfranchisement; and this principle was upheld in the recent report of the court of common council before alluded to (d), and has been practically carried into effect by various acts of parliament.

Police Rate.

By the 10 Geo. 2, c. 22, the court of common council were empowered to assess each ward for the necessary expenses of the police and watch; and by the recent City of London Police Act (e), by which this statute is repealed, very minute regulations have been made for the same purpose.

(a) Spel. Gloss. voce Scot and Lot. Edw. II.

(b) *Anse*, p. 25.

(d) *Anse*, p. 90.

(c) See charter, 8th June, 12

(e) 2 & 3 Vict. c. XCIV.

The corporation are required annually to pay and apply, out of their revenues and possessions, one fourth part of the expenses of the police force (*f*); and in order to defray the remaining three fourth parts of such expenses, the court of common council are empowered to order and direct by writing, under the hand of the town clerk, a just and equal pound rate not exceeding in the whole eightpence in the pound on the net annual value, to be made, laid, and assessed in the several wards, within fourteen days from the date of such order, by the ward authorities (*g*), upon every person inhabiting, holding, occupying, possessing, or enjoying any house within the several wards respectively, or within any precinct or place within the boundaries of such wards respectively, or adjoining thereto, and not included within the limits of the metropolitan police district, whether such person is now liable or not in respect of such house to be assessed to the relief of the poor, by reason of such house being situate in any precinct or extra-parochial place; with a power to the court of common council to appoint an assessor or assessors at the expense of the fund, in case any such ward assessment is deemed by them unfair or unjust.—s. 58.

All precincts and places within the city and liberties of London or adjoining thereto, out of the limits of the metropolitan police districts, are, for the purposes of the act, deemed to be parts of the city of London, and of the wards adjoining.—s. 59.

Where any house, with the appurtenances, is situate partly in one and partly in another ward, the same is, for the purpose only of being rated under the act, deemed to be wholly within the ward in which the larger portion of the ground thereof is situated; and where, from the equal size of the parts in each ward of any such

(*f*) S. 57.

(*g*) *i. e.* The alderman, or his deputy, and the major part of the common councilmen, or, in case of a

vacancy in the office of alderman, the major part of the common councilmen of the ward.—s. 88.

space of ground, or from doubts respecting the boundary of the ward, or from any other cause, it is doubtful in which ward the larger part of such space of ground is situated, such house and appurtenances are deemed wholly situated in whichever of the wards the party rated may elect.—s. 60.

When any house rated under the act is let out in apartments by the owner, any lodger may be deemed the occupier, and in case of paying the rate, may deduct it from the next rent due from him, and the receipt for the rate is a sufficient authority and discharge for such purpose; but no lodger can be required to pay any greater sum in respect of such rate, than the amount of rent then due from him. Persons removing from any house so rated, are liable to such rate in proportion to the time they occupied the same. And in all cases, when any person comes into or occupies any house rated or assessed as aforesaid, out of or from which any other person so rated or assessed for the same is removed, or which, at the time of making any rate, was empty or unoccupied, the person coming into or occupying the same is liable to the rate in proportion to the time of his occupation, to be settled and ascertained, in case of dispute, by the ward authorities.—s. 61. As regards houses not exceeding £25 yearly value, or let to weekly or monthly tenants, or in separate apartments, furnished or unfurnished, and the rents payable at shorter periods than quarterly, the ward authorities may, if they think proper, compound with the owner for the rates, at a reduced rental, but not so that it be rated at less than two thirds, or more than four fifths of the rack rent or annual value; and in case the owner refuses to enter into such composition, he may be thenceforth personally rated, and liable to pay as the occupier in other cases: but no such owner can be charged with or liable to pay for any increased rent reserved or made payable to him, on account of having agreed to pay the rate previously chargeable upon the occupiers; and the goods and chattels of the renter or

occupier, are nevertheless liable at all times to be distrained and sold for payment of the rates, and arrears, becoming due during his occupancy only; but no such occupier is required or liable to pay any greater sum for the rate and arrears, than the amount of the rent then actually due or payable by him to the owner; and the occupier may from time to time deduct the same from the rent, unless there be some agreement to the contrary between the landlord and tenant. If the yearly rent or value of any such house exceed £25, no composition can be made for less than the full amount of the rate, but a composition for the whole rate may nevertheless be made.—s. 62. After such a composition, the house remains rated accordingly, until some other assessment be made by the ward authorities.—s. 63. In order to prevent disputes, the receiver or collector of the rents is deemed the owner, unless the real owner be declared by himself, or is distinctly and certainly known to be such, to the satisfaction of the ward authorities; and such receiver or collector is authorized to pay the rates, and deduct the same out of the rents.—s. 64.

The owner of every other house, above £25 rental, let ready furnished to a lodger, or furnished or unfurnished, in separate apartments for counting-houses, offices, or other purposes, is deemed the occupier, and liable and subject to the rates according to the yearly value; and every person renting or occupying any such ready furnished house, or any apartment, is liable and compellable to pay the rates; and the collector for the time being is authorized and empowered, upon non-payment, to levy the same by distress and sale of the goods and chattels of the owner wheresoever they may be found, or of the person occupying or renting the same, in the manner provided by the act for the recovery of the rates in other cases; and every such occupier paying any rate, or from whom the same may be recovered in pursuance of the act, is authorized to deduct the same, together with the costs paid by him for recovering and levying the same,

out of the next rent due and payable from him to such owner, and the receipt for such payment is a sufficient discharge for him to the landlord therefor; but no lodger can be required to pay any more towards such rates, than the amount of the rent then actually due from him—subject, however, nevertheless, to any agreement between himself and the landlord.—s. 65.

Any house being at the time of making the rate empty, untenanted, or unoccupied, may be rated and assessed by the ward authorities; and in such case, as well as in case the house after the making such rate becomes empty, untenanted, or unoccupied, not exceeding one half of every such rate may be charged thereon, and paid by the owner, or the first tenant or occupier, who is authorized to deduct and retain the same out of his rent.—s. 66.

The ward authorities are required to set down in writing and sign two copies of the rates made from time to time, expressing the names of the beadles or other persons appointed to collect the same; one of such copies, within ten days after the making thereof, to be deposited by such beadle or other person, and remain in the chamberlain's office, to be accessible and inspected, without fee or reward, at all convenient times, by every person liable to be rated, under a penalty of £5.—s. 67.

If it appear to the police committee (*h*) that the name of any person who ought to be included in such rate is omitted therein, or that the name of any person has been inserted in such rate as inhabitant, holder, or occupier, by mistake for any other, or that any house is not rated or assessed according to the net value, or that any other alteration or amendment of such rate may be necessary, the committee may add or insert the name of the person, &c. so omitted, together with the sum for which he ought to be rated and assessed, and the amount of such rate in respect thereof, or the name of such person as

(*h*) As to whom, see *post*, tit. Police.

may be the inhabitant, holder, or occupier, instead of the person incorrectly inserted; and also alter the amount of the sum rated or assessed, and otherwise from time to time alter and amend the said rate, as they may deem just and reasonable; and every such addition, insertion, alteration, or amendment, is valid and effectual in law, to all intents and purposes, in the same manner as the original rate or assessment.—s. 68.

The committee are required, as often as any such addition, insertion, alteration, or amendment is made, to deliver, or cause to be delivered, to the alderman of the ward or his deputy, a copy of such rate, with every addition, alteration, or amendment, made therein, signed by the town clerk; and in case of disapproval thereof by the ward authorities, they may appeal against the same at the next court of aldermen after the same is delivered; and the determination of the said court is final and conclusive, and the rate thereupon valid and effectual in the same manner as the original rate.—s. 69.

All public buildings whatsoever, and all vacant spaces of ground, within the ward, (other than and except St. Paul's cathedral, and churchyards and ground within the iron rails encompassing the same, and all parish churches, churchyards, chapels, meeting houses, prisons, and hospitals for sick persons,) are to be rated and assessed at such rate as the committee order and direct for every square yard of such public building and vacant spaces of ground, not exceeding the rate of fourpence per square yard to be paid by the owner; or in case he is not known or cannot be found, the amount assessed must be paid by the chamberlain out of the city cash, and afterwards be a security upon the ground to the said chamberlain and his successors for repayment; and meeting houses not licensed or used for any other purpose than divine worship, are to be rated and assessed as other buildings.—s. 70.

In order to enable the court of common council or police committee to make such assessment, they are empowered to inspect the tax and rate assessments

made upon the occasions, and take extracts therefrom.—
s. 71.

Upon non-payment of the police rate, the defaulter may be summoned by any justice of the peace for the city, on complaint of the alderman or deputy and common council of the ward, or the police committee, or ward beadle, or any officer or other person appointed by them; and the collector's oath of the rate having been duly demanded, and being still in arrear and unpaid, and on the return of such summons, the same having been served by a person authorized by the court of common council, either personally on the party liable, or at his last place of abode, or at the house rated, any such justice may, either on default of appearance, or on hearing the party, grant a warrant under his hand and seal, authorizing any person to levy the rates and arrears, and the costs and charges incident thereto, (if the same be not previously paid,) by distress, and if not paid within five days, by appraisement and sale of the property distrained; and in case of there being no effects capable of being distrained, or the same be locked up and secured, or removed, so as to prevent a distress being made, or be insufficient to pay the rate and expenses, a warrant may be issued for the apprehension of the defaulter, and his commitment to the city house of correction for any time not exceeding one calendar month, unless the amount due be sooner paid.—s. 72.

Wherever the amount of rate due does not exceed £25, the costs and charges must not exceed the costs and charges specified in the 57 Geo. III. c. 93, for regulating the costs of distresses for small rents.—s. 73. And the form of the distress warrant is given in the 74th section.

If any person liable to the rate begin to remove his goods or furniture from the house in his occupation, or sell or dispose of the same by public auction, or carry away the same without paying all arrears then due or rated in respect thereof, in which the current quarters must be considered as due, the beadle or other person may collect and levy such rate and arrears by distress

and sale of the goods and chattels of the party; the sale to take place after five days from the distress, unless the amount due be sooner paid.—s. 75.

An action of debt or on the case may be brought also in the name of the corporation or chamberlain in any of the superior courts at Westminster, for any rate exceeding £20; in which action it is sufficient for the plaintiff to declare that the defendant is indebted to the plaintiff in such sum of money as the court of common council or police committee shall suppose to be due; and if the plaintiff recover such sum so declared for, or any part thereof, he will be entitled to full costs, to be levied as other monies upon judgments.—s. 76.

The court of common council or police committee may, however, upon complaint of any person subject to the payment of the rate, who shall think himself aggrieved thereby, or incompetent to pay the same, mitigate, reduce, or lessen the same as they in their discretion think just and reasonable, and also remit or excuse payment thereof, or any part thereof, for any cause which they deem sufficient, or for or on account of the poverty or indigence of the party.—s. 77.

The owners and occupiers of such public markets within the city and liberties, as for the time being are not let on farm or lease, are subject to the payment of the same or the like sums of money, as the farmers or lessees would have been liable to if the same had been let on lease or farm, and recoverable in the same manner.—s. 78.

The beadles of the several wards, or such other persons as the aldermen, deputies, and common councilmen of the wards from time to time appoint, are to collect the rate quarterly, at the commencement of each quarter, and enter into some book to be kept by them for that purpose the several sums from time to time received, and the names of the parties paying, which book must at all times be produced, upon demand, and shown to the deputies or any of the common councilmen of the several

wards, and the police committee: and the money received on account of the rate must be paid into the hands of the chamberlain as soon as received, and in such manner as that no such beadle or other person shall ever have a sum exceeding £20 so collected at one time in his hands for three days, under a penalty in each instance of £5; and a surety bond to the satisfaction of the ward authorities must be given for the due performance of the duties of collector—s. 79; and if the beadles, &c. become unable to pay or misapply the money collected, it must be re-assessed on the inhabitants of the ward.—s. 80.

The rate-books, &c. directed by the act may be received as evidence in case of dispute as to the assessment or payment, or otherwise.—s. 81.

All the reasonable costs and charges of the ward clerks for making out the said books, &c., as well as for other useful purposes, to be allowed and paid by the court of common council or police committee, out of the rates, on the certificate of the ward authorities of the approval and allowance thereof by the wardmote, and the police committee may charge the same upon such ward respectively in the next succeeding assessment, to be raised as the other rates; but a distinct account must be kept of such charges and expenses as are not incurred under the act.—s. 85.

Any rents and payments hereafter becoming due in respect of such watch-houses in the several wards as are not required as station houses for the police force until the same can be disposed of, and all other payments and liabilities in respect of the watch from time to time approved in wardmote, and certified to the police committee, are to be paid out of the rates, and be charged upon the ward in the next assessment.—s. 86.

The court of common council are empowered to make such allowance to superannuated watchmen, beadles, and patrols as they think proper, to be paid out of the rates—s. 87; and by a former clause (i), a superannuation fund is directed to be provided by the common council

(i) Sect. 11.

for the general body of the city police, out of deductions from their pay; and the fines imposed by the act, &c. to be called "The City Police Superannuation Fund," to be distributed as directed in the next section (*k*).

The chamberlain must from time to time provide and keep one or more book or books, in which all the sums of money raised or received under the act or otherwise, must be entered at the time of receipt, together with the monies paid and disbursed thereout, expressing the time when, the occasion for which, and the names of the persons to whom, the same is paid.—s. 91.

A true account of the receipts and application of the sums received and paid by virtue of the act, must be annually laid before each house of parliament, distinguishing the expenses of the police force, and the money applied to other purposes.—s. 92.

And an account of such receipts and payments must also be annually laid before the court of common council.—s. 93.

The Consolidated Rate.

By the different acts (*l*) relating to the lighting, paving, and cleansing the city and liberties of London, the commissioners of sewers are invested with power at such times as they think fit to order and direct by writing, under the hands and seals of seven or more of their body, just and equal pound rates or assessments, usually called the consolidated rate, to be made, laid, and assessed in the several wards, by the ward authorities (*m*), upon all persons liable to the poor rates, inhabiting, holding, occupying, possessing, or enjoying any land, house, shop, warehouse, cellar, vault, tenement, or hereditament within the ward, in order to raise such competent sums of money as they think necessary (*n*) for defraying the expenses of paving, cleansing, and lighting the

(*k*) Sect. 12.

(*m*) See *ante*, p. 98, n. (*g*).

(*l*) 11 Geo. III. c. 29; 33 Geo.

(*n*) 11 Geo. III. c. 29, s. 41.

III. c. 75; 4 Geo. IV. c. CXIV.

streets, lanes, squares, yards, courts, alleys, passages, and places within the city liberties, and preventing annoyances therein, and making, enlarging, widening, deepening, altering, and removing all or any of the common sewers, public drains, and vaults within the said city and liberties, to be made, laid, and assessed in the several wards and other places within the limits of these acts, according to the respective annual rents or value of the property assessed, so as such rates and assessments do not exceed the sum of 1s. 6d. in the pound (o).

Property in different wards or districts to be rated proportionably for each, according to the discretion of the ward authorities, with a power of appeal to the court of aldermen in case of dispute (p).

When property is let out in apartments by the lessee, tenant, or landlord, any one or more of the lodgers may be deemed the occupier, and pay the rate, with power to deduct the same from the rent, but the lodger cannot be called on to pay more than the amount of rent actually due. Persons removing from or quitting rateable property, are liable to the rate in proportion to the time of their occupancy; and persons coming in as occupiers after such removal or vacancy, are liable in proportion to the time of their occupancy, to be settled, in case of dispute, by the commissioners (q).

Property under the yearly value or rent of £20, or let to weekly or monthly tenants, or in separate apartments, furnished or unfurnished, at less than quarterly rents, may be compounded for with the landlord, owner, or lessee, at the discretion of the ward authorities or commissioners, but at not less than two thirds or more than four fifths of the rack rent or annual value; and in default of entering into such composition, the property must be rated at the full amount, to be levied by distress and sale of the goods of the party liable, wherever they may be

(o) *Id.*; 4 Geo. IV. c. CXIV.
s. 3.

(p) 4 Geo. IV. c. CXIV. s. 7.
(q) *Id.* sect. 8.

found, or from the occupier, as in other cases. Where, however, an increased rent is received by agreement on account of the landlord paying the occupier's rates, the clear value is calculated independent of such liability; and when the landlord, owner, or lessee is made liable by the act, the goods or chattels of the renter or occupier are liable to be distrained and sold for payment of the rates and arrears becoming due during his occupancy, not exceeding in any case the amount of rent in arrear; and the same may be afterwards deducted from such rent, unless there be an agreement to the contrary. And houses exceeding £20 rent or value, let out furnished, altogether or in separate apartments, may be compounded for at not less than the full amount (*r*). All such compositions at a reduced rate remain in force until altered by the ward authorities or the commissioners (*s*).

The receivers or collectors of the rents are deemed for the purposes of the act the owners, or landlords, and liable accordingly, with power to deduct the same from the rents, unless the real owner declare himself as such, or be distinctly known to the satisfaction of the commissioners (*t*). Owners of houses, &c. above £20 rental, let out ready furnished to lodgers, or furnished or unfurnished in separate apartments, for counting houses or other purposes, are deemed the occupiers, and rated accordingly, the renter or occupier, however, being liable and compellable to pay the rates under the same provisions as in sections 8 and 9 (*u*), without prejudice to any agreements between landlord and tenant (*x*).

Farmers, or lessees of the public markets liable by their leases to pave, &c., and owners and occupiers of such as are not let on farm or lease, are, upon demand of the commissioners, or their clerk, to pay into the city chamber the amount actually expended by the commis-

(*r*) Sect. 9.

(*s*) Sect. 10.

(*t*) Sect. 11.

(*u*) *Supra*.

(*x*) Sect. 12.

sioners therein, to be recovered by action of debt, bill, plaint or information in the superior courts, or those of the city, in the name of the clerk (y); but such farmer or lessees may be compounded with, for a certain sum in lieu thereof: such composition to be entered in a book kept for that purpose (z).

Rateable property which is empty, untenanted, or unoccupied, may be, nevertheless, assessed; but in such case, as well as if it afterwards becomes vacant, it is liable only to one half the rate, which must be paid by the first subsequent tenant or occupier, and deducted from his rent (a).

Owners of large warehouses or manufactories may apply to the commissioners by petition in writing, setting forth the circumstances of the case, and giving notice to the alderman or deputy of the ward, and the petition must be taken into consideration at the next meeting of the commissioners, of which the alderman or deputy must have special notice; and the commissioners may grant such relief as they think fit, with a power of appeal to the court of aldermen (b).—s. 48.

Wharfs, warehouses, vaults, or cellars upon wharfs, not fronting any street or lane, are not to be rated at more than two thirds their value. The right to this exemption to be determined by the commissioners through the ward authorities (c).

All parish churches, churchyards, chapels, meeting-houses, and other public buildings, and void spaces of ground, (other than and except hospitals, and also St. Paul's cathedral, and the churchyards and ground within the iron rails (d) encompassing the same,) to be assessed at the rate ordered by the commissioners, not exceeding 4*d.* per square yard, and dead walls also at a rate not ex-

(y) 11 Geo. III. c. 29, s. 43;
4 Geo. IV. c. CXIV. s. 21.

(z) 11 Geo. III. c. 29, s. 44.

(a) Sect. 45.

(b) Sect. 47.

(c) Sect. 49.

(d) The pavement on the outside the rails is paved by the commissioners, at the expense of the trustees of St. Paul's cathedral.—s. 53.

ceeding 6*d.* per yard, running measure. The rates upon such churches, churchyards, or chapels, to be paid by the church or chapel wardens, and upon meeting-houses, by the minister or deacons, or other person usually officiating therein, to be recovered by action of debt, bill, plaint or information in the superior courts at Westminster or London; and in default of payment, to be a charge upon the building, and be recovered in the same manner against the owner or landlord; and rates upon public buildings (not being hospitals), or upon dead walls, or void spaces of ground, to be paid by the owner or proprietor; or in case he is not known, or cannot be found, then to be advanced by the chamberlain out of the city cash, and the ground to remain a security for repayment (*f*).

Tenants to hospitals are liable as other persons (*g*).

The inns of court and chancery are required to be rated, by way of composition for repairs of the adjoining pavements, as follows (*h*):—

| | £ | s. | d. | |
|-------------------------------|----|----|----|----------|
| Inner Temple | 2 | 2 | 0 | per ann. |
| Middle Temple | 6 | 6 | 0 | |
| Serjeants' Inn, Chancery Lane | 10 | 0 | 0 | |
| Staples Inn | 14 | 0 | 0 | |
| Furnival's Inn | 20 | 0 | 0 | |
| Barnard's Inn | 6 | 0 | 0 | |
| Clifford's Inn | 2 | 2 | 0 | |

to be paid by the treasurer, principal or other proper officer, and in default of payment, to be recovered in the same manner as the rates upon parish churches, &c. (*i*).

The paving of new streets, &c., may be compounded for by the proprietors or lessees; the commissioners being authorized, first, to view and inspect the same, and afterwards to order their surveyor or other proper

(*f*) Sect. 51.

(*g*) Sect. 52.

(*h*) Sect. 55.

(*i*) Sect. 55.

person to give notice to the parties, or leave the same at their place of abode, or with their servants, or stick the same on some conspicuous part of the premises, requiring the parties to meet the commissioners within fourteen days afterwards, to compound for such paving, at any rate not exceeding three shillings per square yard, whether carriageway or footway; and in default of such composition or attendance, the commissioners may order the same to be paved at the parties' expense, and the amount recovered, as in other cases (*k*). Nothing in the act to interfere with any agreement between landlord and tenant; but, in case of dispute, the same may be settled by the court of aldermen (*l*).

Within seven days after the assessment is made, the same, or a duplicate thereof, must be delivered to the clerk of the commissioners of sewers, at their office (*m*); and the commissioners may rectify any errors, omissions, or make alterations therein (*n*); and a copy of every assessment, so altered, must be delivered to the alderman or deputy of the ward, and he or any of the common council may appeal therefrom to the court of aldermen, whose determination is final and conclusive (*o*).

At the wardmote in each ward on or near St. Thomas's day, for the election of ward officers, a sufficient number of substantial inhabitants are required to be chosen as collectors for the year ensuing of the consolidated rate, to be bound on oath or affirmation; and there is a penalty of £50 on refusal to serve or take the oath, not being legally exempt, and other persons may be appointed by the ward authorities, or in default thereof, by the commissioners in their stead (*p*).

Persons refusing or neglecting to pay the rates may be

(*k*) Sect. 56.

(*l*) Sect. 57.

(*m*) 4 Geo. IV. c. CXIV. s. 4.

(*n*) Sect. 5.

(*o*) Sect. 6.

(*p*) Sect. 25. This compul-

sory service is now very much disapproved of, particularly where pecuniary responsibility is required, and though the collectors of the consolidated rate in most wards collect gratuitously, yet in Langbourn,

summoned by any alderman or justice of the peace, on complaint made by the commissioners or their proper officer, and the collector's oath of a previous demand having been made, and of the rate being in arrear; and in default of attendance or discharging themselves from the rate, the same must be paid with the costs of the summons, or an affidavit of the service or warrant may be issued by such alderman or justice, authorizing the rate, and arrears and costs to be levied by distress of the defaulter's goods and chattels; and unless, within five days after, the rate and costs are paid, the distress may be appraised and sold on the premises or elsewhere: and in case no sufficient distress can be made, a warrant may be issued by such alderman or justice for the defaulter's apprehension and commitment to the common gaol or house of correction, for any time not exceeding one calendar month, unless the amount be previously paid (*g*). All constables, &c. are required to assist in the execution of such warrants, and the form thereof is given in the act (*r*).

In cases of persons removing or disposing of their goods without paying such rates and arrears, including the current quarter, the collector for the time being may levy the same by distress and sale (*s*).

The commissioners may, if they think it more expedient, bring or cause to be brought, in the name of any of their clerks, or of any one or more of themselves, an action of debt or on the case in any of the superior courts at Westminster for such rates, under the same advantages and qualifications as before provided for the recovery of the police rate (*t*), and the rate books are declared sufficient evidence of the making the rate and the payment of such part as is so entered therein (*u*).

Walbrook, and Farringdon-without,
paid collectors have been substituted. See 2 Rep. M. C. p. 174.

(*g*) 4 Geo. IV. c. CXIV. s. 13.

(*r*) Sect. 15.

(*s*) Sect. 16.

(*t*) Sect. 17; *vid. ante*, p. 104.

(*u*) Sect. 18.

The commissioners are empowered, upon the complaint of any person subject to the rates thinking himself aggrieved thereby, or incompetent to pay the same, to mitigate or reduce or lessen the same, as they in their discretion think just or reasonable, and also to remit or excuse payment for any cause which they deem sufficient, or for or on account of poverty or indigence (*x*).

All the reasonable costs and charges of the ward and vestry clerks in making out books, duplicates, and copies of the rates, to be ascertained and allowed by the said commissioners out of the rates (*y*).

The Sewers Rate.

For defraying the expense of repairing and cleansing such public sewers, drains, and vaults, the commissioners are authorized by writing under their hands and seals (*z*), to make, lay, and assess one or more rates or assessments, more peculiarly called the sewers rate, upon all persons inhabiting, holding, occupying, possessing, or enjoying any land, house, &c. within the above limits, not exceeding fourpence in the pound on the yearly rack-rent, to be paid by the tenant or occupier, and deducted out of the rent (*a*). The collectors to be appointed and paid by the commissioners out of the rates; and separate and distinct accounts are required to be kept of all the monies so raised (*b*).

The Trophy Tax.

Besides the above three rates, an assessment is levied in the city of London about once in three years, called the trophy tax, for keeping up the staff of the trainbands. It is assessed by the court of lieutenancy of the city, and apportioned by the common council of each

(*x*) Sect. 19.

(*y*) Sect. 22.

(*z*) 11 Geo. III. c. 29, s. 69.

(*a*) Sect. 70.

(*b*) Sect. 73. Thus two distinct

rates are made for very nearly similar purposes, but one is paid by the occupier, and the other by the landlord.

ward. The account is printed with the city accounts in the year when it is levied; but the corporation have no concern with, or control over, the expenditure (c).

Tithes.

Among the local rates ought also to be classed the tithes, or tithe-rates, payable in London by custom or statute, which differ materially from the tithes payable in other parts of the kingdom; but it has been thought better to treat of these in a separate chapter.

Orphans' Fund.

Another charge peculiar to the city of London, is that usually denominated the orphans' fund, the history of which is as follows:—

The court of aldermen are, as we shall see in a future part of this work, the guardians of all citizens' orphans, and as such, formerly had the custody of their property during minority. By the shutting up the exchequer in the close of Charles the Second's reign, funds to the amount of £750,000, consisting of orphans' monies which had been invested by the court, were wholly lost to the corporation; and the mode of paying off the orphans' claims was settled by act of parliament (d), by which, besides various charges upon the city estates, an annual sum of £2000 was directed to be raised from the personal property of the inhabitants, and collected in each ward; but the orphans' claims having been long since satisfied, the charge upon the corporation estates has been applied in various public improvements, though still retaining the original name of the "orphans' fund." The tax on the inhabitants was, however, repealed as far back as 1795 (e).

(c) 2 Rep. M. C. p. 217.

(e) By 35 Geo. III. c. 127.

(d) 5 & 6 Will. & M. c. 10.

CHAPTER X.

THE MINISTERIAL OFFICERS OF THE CORPORATION.

CORPORATIONS enjoy together with individuals the power of appointing officers or servants; but in the instance of corporations, the officers often form a component part of the corporation itself. Such is the case with the mayor and aldermen of London, who are undoubtedly all in their individual capacity officers of the corporation, though they together form an essential part of the civic constitution.

The officers or ministers, however, of whom we are now going to treat, are such as are under the control of the ruling body, and removable by them for misconduct or otherwise. They are consequently distinguished as ministerial officers. The qualifications requisite for, and the nature of, such offices depend in general on the constitution, usage, or by-laws of the corporation itself (*a*). They will, therefore, be better understood by treating of the different offices separately, as we have already had occasion to consider some of the general regulations relative to the election of civic officers in London (*b*).

The most important office in the gift of the corporation of London is undoubtedly that of recorder, the origin of whose peculiar functions may be gathered from what has been said in a former page (*c*).

The persons who were ordinarily called on to *record* the proceedings and customs of the courts among our northern ancestors, would evidently be those who were the most conversant therewith, and by a very natural transition would become in time a most essential portion of the judicial department. Hence we find, that in most

(*a*) Kyd on Corp. vol. 1, ch. 3,
s. 2.

(*b*) *Ante*, pp. 36, 57, 58.

(*c*) *Ante*, p. 9.

ancient cities, regular authorized officers, called recorders, have been in existence from time immemorial. The recorder of London, according to the ancient city books, must be, and "is wont to be, one of the most skilful and virtuous apprentices of the law of the whole kingdom, whose office is always to sit on the right hand of the mayor, in recording pleas, and passing judgments; and by whom records and processes had before the mayor and aldermen, ought to be recorded at *Great St. Martin's (d)*, by word of mouth, before the judges assigned there to correct errors. The mayor and aldermen have, therefore, used commonly to set forth all other businesses, touching the city, before the king and his council, as also in certain of the king's courts, by Mr. Recorder, as a chief man, endued with wisdom and eminent for eloquence" (*e*).

In another of the city books a record is preserved, of the date of 1304, from which the duties of the recorder at that time may be further collected. John de Wengrave, alderman and recorder, was sworn "well and faithfully to render all the judgments of the hustings, after the mayor and aldermen should meet concerning their pleas, and agree together; and also all other judgments touching the city of London, &c., and that he should do justice as well to poor as rich, and that all the pleas of the hustings presently after the hustings is finished, he should oversee, order, and cause to be enrolled, according to the things pleaded, &c., and that he should come prepared to dispatch the business of the city, &c. when he should be lawfully warned by the mayor and bailiffs, for which labour he was to have £10 sterling per annum out of the chamber, and 20*d*. for each charter written, and each testament enrolled in the hustings (*f*).

During the reigns of Edward I. and his two immediate

(*d*) The court of error from the lib. 5, ch. 8.
hustings, described hereafter.

(*f*) 32 Edw. I.; Lib. Horn.;

(*e*) Lib. Alb.; Strype's Stow, Strype's Stow, lib. 5, ch. 8.

successors, the recorders of London were chosen from among the aldermen (*g*); but were always, it is presumed, lawyers by profession, in accordance with the custom set forth in the above extract; and by an order of the court of aldermen made in the reign of Philip and Mary, the recorder, common serjeant, and under-sheriffs (*h*) are required to be chosen from old and learned officers of the city, or out of the number of the six learned counsellors. The recorder is elected for life by the court of aldermen, and admitted and sworn in before them. The duties of the office at this day are very extensive, comprehending many of the original functions exercised by the chancellor in a higher sphere.

The recorder of London is the adviser of the corporation (*i*), and the representative of the mayor and aldermen in their judicial capacity, and as such presides over the court of hustings and the mayor's court. Though not the chairman, he exercises most of the functions of speaker in the courts of aldermen, common council, and common hall, the questions being (with some exceptions) put by him (*k*).

It is laid down as the general duty of a recorder, to advise the whole corporation as a body, and not particular officers or classes in their distinct capacities (*l*); and by one of the standing orders of the court of common council, the recorder and common serjeant are directed to be advised with in all cases relating to the city affairs, where the opinion of counsel is required (*m*).

The judicial functions of the recorder will be more particularly noticed in another place, in treating of the city courts of justice. In his judicial capacity he is

(*g*) See their names in Strype's *M. C.* p. 82.
Stow, *ubi sup.*

(*h*) *i. e.* The sheriff's deputies,
or judges of the sheriff's court.

(*i*) 3 S. O. 19 January, 1716.

(*k*) *Ante*, pp. 54, 85; and 2 Rep.

(*l*) *Serjt. Whittaker's case*, 2
Salk. 435; 2 Ld. Raym. 1238;
Serjt. Burland's case, Burr. 1999.

(*m*) 3 S. O. 19 January, 1716.

technically looked upon only as the organ of the mayor and aldermen, his office being to sit on the right hand of the mayor, in recording pleas and passing judgments (*m*). In practice, however, he is the sole judge (*n*); and by the ancient custom of the city, the judgment can only be pronounced by the mouth of the recorder (*o*); and, therefore an outlawry in London is pronounced *per judicium recordatoris* (*p*). The ancient recognizance in the nature of a statute staple was directed to be taken before the recorder of London out of term (*q*), and several modern acts of parliament (such as those respecting the rebuilding of London Bridge and its approaches) have expressly directed the cases of compensation to be tried before the recorder (*r*).

The recorder is also by charter a justice of the peace for the city and liberties of London and the borough of Southwark, as well by land as by water (*s*). He is further constituted one of the justices of oyer and terminer for the city and liberties (*t*); and by the Central Criminal Court Act (*u*) he is expressly named as one of the judges of that court, and in practice he is usually the principal judge. At the conclusion of each session he prepares a report of the case of every felon capitally convicted within the city of London and county of Middlesex, for the information and consideration of the Queen in council, and afterwards attends to take the directions of the Crown, under advice of privy council. It then becomes the duty of the recorder to issue his warrant for the reprieve or execution of the criminal (*x*).

All the duties of a justice of the peace as chairman

(*m*) *Anie*, p. 116.

(*n*) 2 Rep. M. C. p. 82.

(*o*) Priv. Lond. tit. Court of Hustings.

(*p*) Co. Litt. 288 a.

(*q*) *Id.* 2896; and 23 Hen. VIII. c. 6.

(*r*) 2 Rep. M. C. p. 83.

(*s*) 1st charter of Edw. IV. and 1st Car. I.

(*t*) *Id. ib.*; and 2nd charter of Jac. I.

(*u*) 4 & 5 Will. IV. c. 36, s. 1.

(*x*) 2 Rep. M. C. p. 83.

devolve upon the recorder at the quarter and other sessions, holden at Guildhall, and at the quarter sessions for Southwark (*y*).

Besides these various duties, the recorder is looked upon as the advocate of the corporation, and has a brief in all cases in which the city is concerned, except in the courts where he himself presides; and argues cases before parliament as counsel for the city (*z*).

We have before seen the mode in which the more immediate duty appertaining to his office of recorder, that of recording the ancient city customs, is executed (*a*). He is also recognized in other respects as the mouth-piece of the corporation. He attends the lord mayor on public occasions of importance, on the several occasions of his being presented to the lord chancellor, and the barons of the exchequer; and also presents the sheriffs at the Court of Exchequer, on their election and admission into office. He accompanies the lord mayor on the occasion of his holding courts of conservancy for the river Thames, and charges the jury on the subject of their presentment of nuisances, and otherwise, and holds with the lord mayor a court for the trial of offences so presented, when occasion requires (*b*).

Being elected for life, the recorder cannot be removed, but for reasonable cause (*c*); such as neglect of the duties of his office, by refusing or omitting to attend the corporation sessions, though not sent for (*d*). It has been decided, however, that the office may be performed by deputy (*e*); and in some instances, this has been done by the consent of the court of aldermen (*f*); though, from

(*y*) *Id. ib.*

(*z*) *Id.* p. 82.

(*a*) *Ante*, p. 11.

(*b*) 2 Rep. M. C. p. 82. The present recorder is also steward of Southwark, which imposes upon him the additional duties of judge of the court of record and the three courts leet in that borough under

the control of the corporation. See 2 Rep. M. C. p. 162.

(*c*) Co. Litt. 233 a.

(*d*) Salk. 434; Holt, 443. *Vid.* 1 Ventr. 143; 2 Kel. 770, 796; Burr. 1999; 1 Hawk. c. 66, s. 1.

(*e*) *Malins v. Welby*, 1 Lev. 76.

(*f*) 2 Rep. M. C. p. 38; *Strype's Stow*, lib. 5, ch. 8.

the responsibility attached to the office, this is not very likely to be the case at the present day.

The Common Serjeant.

Assistant in many respects to the recorder, there is an ancient officer belonging to the corporation of London, called the common serjeant, whose duties are, besides acting like the recorder, as the adviser and advocate of the corporation, to attend at the courts of aldermen and common council, and the different committees, ready to give advice when called upon; and, as the officer of the court of common council, to carry their bills to the aldermen. The presence of the common serjeant, we have seen (*g*), is also essentially necessary at elections in common hall; and he has, besides this, to attend the lord mayor on all public occasions, the judges of the superior courts on the first day of Michaelmas Term, and at the Guildhall sessions, whenever the corporation have business there, and act as counsel for the city when called on in Westminster Hall, or elsewhere.

In the now disused court of orphans, his duties very much resemble those of an ordinary master in chancery (*h*); all the accounts, inventories, deeds, and securities relative to orphans' estates, being required to be referred to him; at the present day, however, by far the most important duties attached to the office, are those imposed upon him in the character of a judge. By the Central Criminal Court Act (*i*), he is required to be named in the commission of *oyer and terminer* at the Old Bailey sessions, and he does, in fact, preside daily in one of the courts there during the sessions (*k*), as the judicial officer of the corporation, to hear and determine criminal cases.

The Town Clerk.

The town clerk, or common clerk, sometimes called the secretary of the city, is an ancient and chartered

(*g*) *Ante*, p. 85.

(*h*) See 2 Ventr. 341.

(*i*) 4 & 5 Will. IV. c. 36, s. 1.

(*k*) 2 Rep. M. C. p. 83.

officer, considered to form a component part of the corporation (*l*); that is to say, he is so far a necessary portion of the municipal constitution, that unless sanctioned by an act of common council in pursuance of the legislative power before referred to (*m*), the corporation could not legally dispense with the office.

The town clerk is the clerk of all courts holden before the mayor and aldermen, *viz.* of their council in the inner chamber, or court of aldermen; of the outer chamber, or mayor's court, and its appendage, the court of orphans; of the hustings, the courts of common council and common hall, and the courts of conservancy; and generally in all public business, where the lord mayor is first in commission, this officer is clerk or registrar, unless some other clerk is specially named (*n*).

He was formerly, also, attorney and solicitor of the corporation, and clerk of the peace, but these offices are now performed by other persons. Under all acts of parliament where powers are given to the corporation to carry any works, &c., of a public nature into execution, unless a special power is given to appoint clerks, &c., the town clerk is bound to take the duty; and by the present regulations of the duties of town clerk, made by common council, he is the clerk of their committees, when the power is given to appoint clerks (*o*).

The business of the common seal of the city (*p*), and that of the mayoralty (*q*), both appertain to this office, and all acts of common council are read and published by the town clerk himself, or one of his clerks (*r*). It is the town clerk's duty also to advise on behalf of the laws, customs and privileges of the city, and to keep in safe custody all the charters, records, repertories, journals, and other muniments, books and documents belonging

(*l*) *Id.* p. 84.

(*m*) *Vide* p. 45. *ante*.

(*n*) 2 *Rep. M. C.* p. 84.

(*o*) *Id. ib.*

(*p*) *Ante*, p. 90.

(*q*) *Id.* p. 21.

(*r*) *Id.* p. 55.

to the city, in the muniment room and other rooms provided for that purpose (*s*).

The various duties thus imposed upon the town clerk of London, constitute him the general agent of the corporation. We have elsewhere seen the mode in which his duties are performed in the character of clerk to the courts of aldermen (*s*), common council (*t*), and common hall (*u*); and in their proper places will be noticed the remaining duties of this officer, whether as clerk to the mayor's court or otherwise. In these departments, he has various assistants, as the four attorneys or clerks of the lord mayor's court (*x*), &c.

The City Solicitor.

The city solicitor has the conduct of all proceedings whatever in law or equity in which the corporation are interested, and such other general business as he may be ordered to do by the courts of aldermen and common council, or any of their committees (*y*). At the first meeting of the court of common council in every term, he is obliged to lay before them a statement of all causes or prosecutions directed by any branch of the corporation, and any other material business in his hands, and the state thereof at that time (*z*).

The Remembrancer.

The remembrancer is a much more ancient officer of the corporation, whose original duties were in a great degree ceremonial, having to bear in mind and see to the due observance of all presentations, public processions, and other matters affecting the privileges of the corporation (*a*). In this character, he was necessarily their agent in parliament, and at the council and treasury

(*s*) 2 Rep. M. C. p. 84.

(*s*) *Ante*, p. 34, *et seq.*

(*t*) *Ante*, p. 52, *et seq.*

(*u*) *Ante*, p. 84, *et seq.*

(*x*) 2 Rep. M. C. p. 84.

(*y*) *Id.* p. 87.

(*z*) 32 S. O. 21st June, 1809.

(*a*) Priv. Lond. 69; Strype's
Stow, lib. 5, ch. 8.

boards, and has at this day all the duties to perform of parliamentary solicitor to the corporation, to give daily attendance at the Houses of Parliament during every session, to transact all the parliamentary business of the corporation, examine all bills and proceedings of the Houses of Lords and Commons, and to report on such as may be likely to affect the interest or privileges of the city, and to attend all courts of aldermen and common council, and committees, when required (*b*).

The Chamberlain.

The chamberlain of London is an officer of considerable responsibility, and has usually been chosen from among persons of rank and standing in the corporation, such as past lord mayors, &c. In several of the early charters of London the chamberlainship is expressly reserved to the king (*c*), whose officer the chamberlain was, and his receipts were all accounted for at the exchequer (*d*), including various of those customary payments, which were afterwards granted to the city; and there is certain proof of the king's prisage of wines being collected by the chamberlain during the reign of Edward III (*e*).

It was very commonly the case, that the offices of mayor and chamberlain were filled by the same persons (*f*). However, the 1st charter of Edward II. expressly provided that the mayor should hold no other civic office besides the mayoralty (*g*); and that the chamberlain, common clerk, and common serjeant, should be chosen by the commonalty (*h*). The chamberlain is accordingly now chosen in common hall (*i*). His duties

(*b*) 2 Rep. M. C. p. 88, 89.

(*c*) 5th charter of John; 2nd of Henry III.

(*d*) Mad. Exch. vol. 1, pp. 765, 766, 776, *et seq.* Lib. B, fol. 38, City Records.

(*e*) Harg. Tracts, Brit. Mus. p. 118.

(*f*) See Strype's Stow, lib. 5, ch. 5; Lib. B, fol. 3, 9, 38, &c.

(*g*) 1st charter of Edw. II. art. 4; Norton's Com. p. 428.

(*h*) *Id.* art. 18, p. 431.

(*i*) *Ante*, p. 83.

are, for the most part, financial, having to receive all the rents, profits, and revenues of the corporation, as they are respectively collected, and report defaulters, and pay all monies on account of the corporation upon warrants or orders of competent authority, and conformably to the various resolutions and orders of the courts of aldermen and common council, and the different improvement and other acts ; and to keep detailed accounts of such receipts and disbursements (*k*). An annual statement of which is required to be laid before the court of common council (*l*) ; and, in performance of these duties, he has to attend the courts of aldermen and common council, and also the Houses of Parliament when required.

He is also accountant general of the court of orphans, with a further power of taking security from the parties holding the money to pay or account therefor (*m*) ; and, as such, he is deemed in law a corporation sole, so as to hold a bond or other security in succession.

The chamberlain also admits, on oath, all persons entitled to the freedom of the city ; and hears and determines all cases or complaints between masters and their apprentices. In this latter capacity, as we shall see hereafter under the head of Apprenticeship, he has power to commit either master or apprentice to prison, or direct proceedings in the mayor's court to recover back the premium (*n*).

Subordinate and assistant to the chamberlain, are the clerk and assistant clerk of the chamber (*o*).

The Comptroller.

The comptroller of the chamber, as the name imports, has in a great degree the examination and revision of the chamberlain's accounts (*p*), and is sometimes called vice-chamberlain ; and besides this, it is his duty to take

(*k*) 2 Rep. M. C. p. 101.

(*l*) *Ante*, p. 51.

(*m*) Hob. 247 ; 1 Rol. Abr. 550,
S. C. ; *post*, tit. Court of Orphans.

(*n*) See *post*, tit. Mayor's Court.

(*o*) See 2 Rep. M. C. p. 102.

(*p*) 2 Rep. M. C. p. 103 ; Priv.
Lond. 69.

care of the title-deeds, leases, plans, &c. of the city's property; to view the city's estate as the steward of the corporation, and observe the condition of the lands, houses, &c., prevent encroachments, and see to their preservation; to compile the general rent-roll, and accounts of fines received for leases, and sale of offices; examine all leases granted to the city, and prepare those granted by the city, and sign dockets thereof for passing the city's seal. The comptroller is, by virtue of his office, clerk to the committee of city lands, and as such, has to transact all the details of the management of the city estates, such as the advertising the property, &c., and may, in fact, be called the general steward and conveyancer of the corporation (*q*). He is obliged to qualify himself by being admitted a broker, to be enabled to let the city's estates, and conduct sales by public auction.

Besides these various officers, there are appointed numerous others whose duties are more or less connected with the municipal government in its corporate capacity, but their principal functions being exercised in connection with particular departments, such as the courts of law, or the regulations of trade, will be considered in their proper places, when we come to treat of those subjects. There are, however, more immediately connected with the management of the corporation property, other officers, whose duties cannot be conveniently noticed elsewhere; such are the auditors of the city accounts, chosen in common hall, as a check upon the remembrancer and comptroller; and the clerk of the city's works, chosen in common council, whose duty it is to make such surveys, plans, and valuations as may be required of the property belonging both to the city and bridge-house estates, and of any other about to be purchased; to make designs, plans, descriptions, estimates, and working drawings, for all new buildings

(*q*) Reports of Committees of 31 March, 1831; and 27 May, 1841. Common Council, 13 October, 1785;

intended to be erected at the expense of the corporation; to examine the materials intended to be used therein; to superintend the execution of the works, and see that they conform to the Building Act (*r*); to measure and value the same, see to the performance of all contracts, and keep accounts of the expenses; make estimates on the granting or renewal of leases, have proper covenants inserted and see to their performance, and make reports from time to time of all breaches of covenant and dilapidations, nuisances, encroachments, or obstructions, and of the expenses of repairs of any property under the control of the city, as public buildings, markets, watermen's stairs, &c. (*s*), which are directed by one of the standing orders to be made half yearly (*t*).

The remaining class of corporation officers are those who are appointed as deputies of, or subordinate to, the corporation in the administration of justice within the city, or in other public duties usually performed by persons in the immediate service of the Crown.

The peculiar position of the city of London with respect to the rest of the kingdom, was, after the Norman Conquest, the continual cause of dispute between the municipal government and the Crown, as to the extent of the authority of the latter within the limits of the civic jurisdiction; and many of the royal charters were expressly granted for the purpose of defining this authority, and guaranteeing the citizens against a repetition of that arbitrary interference with their corporate franchises, which had so often been exercised by the early feudal sovereigns.

Thus, besides giving the power of appointing the sheriffs, which will be more conveniently noticed in the next chapter, the charter of Henry I. declares that the citizens should place whom they would of themselves, for keeping the pleas of the Crown, and that none other should be justiciar over them. The person who was

(*r*) 14 Geo. III. c. 78.

(*t*) 50 S. O. 20 September, 1827.

(*s*) 2 Rep. M. C. p. 97, 98.

chosen for this purpose by the citizens, is supposed ordinarily to have been the portreve (u), and it is still necessary that the lord mayor should be placed at the head of the commission of oyer and terminer at the Old Bailey (x). So by the first charter of Edw. III., it was declared that the marshal, steward, or clerk of the market of the king's household (y), should exercise no jurisdiction within the city, nor draw out the citizens to plead before him, and that no escheator or officer should from thenceforth exercise the office of the escheator within the city, but that the lord mayor should be escheator, so as always that he take the oath of office, and answer therefor to the Crown; and further, that the constable of the Tower should not, as had sometimes been the case, on pretence of toll being due, seize the citizens' goods passing in or out of the city. And subsequent charters (z) declare that the mayor, aldermen, and recorder, should be justices of the peace in London, which though previously customary in the city, it is now well established they could not be, except by charter (a); and that the corporation at large should have the conservancy of the Thames and Medway (b), and various other offices, both advantageous in themselves, as regulating the trade of the metropolis, and productive of profit in the tolls imposed; such are the offices of gauging, metage, searching, portorage, scavage, tronage, &c., all of which will be noticed in their proper places.

These charters empower the corporation to appoint proper persons to carry them into effect, and are therefore the foundation of many of the offices at this day performed by the appointees of the corporation.

(u) Norton's Com. p. 346.

(x) *Ante*, p. 22; *post*, tit. Central Criminal Court.

(y) Concerning whom, see 2nd Inst. art. *sup.* *Chartas*, 541, 2; 3rd Inst. 273; 4 Bl. Com. 275.

(z) Charters 1 Edw. IV. and

15 Geo. II.

(a) *Res v. Langley*, 2 Ld. Raym. 1030; *Jones v. Williams*, 5 D. & R. 662.

(b) Stat. 17 Ric. II. c. 9; 1st charter of James I.

The authority given by charter to the mayor, aldermen, and recorder, to be justices of the peace within the city, is in the nature of a perpetual commission, the powers of which are to be exercised successively by the different persons filling those offices (c), and the Crown has no direct power to discharge them from the commission, as other ordinary justices (d); but an information may be obtained against them as such justices, for wilfully absenting themselves from sessions where their presence is essential in order to hold a court (e), and they are all of course answerable civilly or criminally for neglect of their duty, in the same manner as ordinary justices of the peace appointed by commission.

Under the mayor and aldermen, as such justices, there are appointed by the court of aldermen (f), the clerk to the lord mayor, and to the sitting magistrates at Guildhall and Southwark, and their assistants, having precisely the same duties to perform as ordinary magistrates' clerks (g).

The Coroner.

The lord mayor is by custom the coroner of London (h), but the officiating coroner is elected by the court of common council, in pursuance of the fourth charter of Edw. IV., and executes the usual functions of a coroner in the city of London, and throughout the municipal borough of Southwark, including the Temple, Whitefriars, and both the St. Bartholomews, but not the Liberties of the Clink or Ely Place. He does not, however, in Southwark, execute writs in which the sheriff of the county is interested; but he does in cases where the

(c) See *Weatherhead v. Drewry*, 11 East, 175.

(d) *Rex v. Langley*, 2 Ld. Raym. 1030; *Jones v. Williams*, 5 D. & R. 662.

(e) See *Rex v. Fox*, 1 Str. 21;

2 Hawk. c. 26, s. 9; Bac. Abr. Information, B, in note.

(f) 2 Rep. M. C. p. 46.

(g) See *id.* p. 92, 93.

(h) 4 Inst. 250; 2 Hawk. P. C. 53, 4; 9 Co. 29 b.; *ante*, p. 19.

bailiff of Southwark is so. As coroner, he has to attend at the Old Bailey sessions and Surrey assizes (i).

The river Thames is within the coroner's jurisdiction, on the London and Southwark sides of the middle of the stream, so far respectively as they are opposite to the territory of the city of London and borough of Southwark (k). As the lord mayor is by custom the coroner of London, the coroner's court is supposed to be holden before him or his deputy (l); and outlawries in London are not proclaimed, as in other places, by the acting coroner, but by the recorder, who is the mouth-piece of the corporation (m).

The Clerk of the Peace.

The clerk of the peace for London is elected by the court of common council. The clerk of the peace, or clerk of the sessions of the peace (as he is sometimes called), seems formerly to have been the mere clerk of the justices at sessions, and is so called in the statute 12 Ric. II. c. 10. He was employed to make out the records of the sessions, and was afterwards entrusted with their custody. In counties, one of the body of justices was usually chosen for the latter purpose under the name of *custos rotulorum*, and the clerk of the peace was at an early period appointed by him, though still continuing the clerk of all the justices (n). The 37 Hen. VIII. c. 1, enacted, "that the *custos rotulorum*, or other person to whom of right it doth belong to nominate or appoint the clerk of the peace, shall from time to time, when the office is void, nominate and appoint one able and sufficient person residing in the county, or place of which he is clerk, to execute the same by himself, or sufficient deputy; and to take the fees and perquisites

(i) 2 Rep. M. C. p. 88.

(k) *Id. ib.*

(l) 4 Inst. 250.

(m) *Id.* 247; *ante*, p. 118.

(n) See Lambard's *Eirenarcha*, lib. 4, fol. 387, 394; and case of *Harcourt v. Fox*, 1 Show. 426; 1 Dowl. 454; 6 Bingh. 25.

of the office for so long time only, as such clerk of the peace well demean himself in his said office."

The office of clerk of the peace for London was formerly incident to that of town clerk, who is the keeper of the records of the corporation (*o*). But by the opinion of Treby and Somers in 1690, it was decided that the two offices might be severed by express act of common council, and on the death of the town clerk in 1801, the separation was made without any such act. The clerk of the peace in London is also clerk of the arraigns at the Old Bailey, though the latter office is conferred by the commissioners of *oyer and terminer*, and not by the corporation as such (*p*).

(*o*) See *ante*, p. 121.

(*p*) 2 Rep. M. C. p. 40.

CHAPTER XI.

THE SHERIFFS.

BESIDES the ancient reves, who preceded our present aldermen (*a*), there seems to have been an officer in authority in London, before the Conquest (*b*), called the king's *gerefa*, or bailiff, whose more immediate duty it was to execute the king's precepts, and preserve the rights of the crown within his bailiwick: whether he was identical with the Roman consul or vice-consul, however, as Fitz-Stephen alleges, must remain undecided (*c*).

The name of bailiff is said to have been retained until the time of Edward I. (*d*), and both sheriffs and bailiffs are mentioned in London for some time after (*e*).

It does not appear that the crown had ever the acknowledged right of appointing these officers; but they seem, on the contrary, to have been elected from the earliest period by the citizens (*f*). Indeed, there is an authority for believing that the shrievalty of London was expressly granted by William the Conqueror, with consent of parliament; and that this grant was pleaded in an old case in the reign of Henry VI. (*g*). Mr. Justice Blackstone lays it down that sheriffs were formerly always chosen by the inhabitants; which right was confirmed by statute 28 Edw. I. c. 8, declaring that the people should have election of sheriffs in every shire, where the shrievalty is

(*a*) See *ante*, p. 25.

(*b*) Wilkins' *Leges Sax. Jud. Civ.*
Lond. 69.

(*c*) See *ante*, p. 2.

(*d*) 1 Leon. 384.

(*e*) Strype's *Stow*, lib. 5, ch. 6.

(*f*) Norton's *Com.* p. 79; *Mad.*
Firma Burgi, p. 165.

(*g*) Strype's *Stow*, lib. 5, ch. 26,
quoting lib. K, in *Archiv. Lond.*

not of inheritance (*h*). The brief charter of William I., to which we have before alluded (*i*), and which is mentioned in the *inspeximus* of Charles II. as the first of the city charters, might therefore safely be pleaded as confirming this among the other rights and customs of the city.

The situation of the sheriff in former times must have been one of the highest responsibility, having to collect the royal revenue (*k*), superintend distresses, (which were anciently resorted to on every occasion when the rights of the feudal lord were in question, such as wardship, reliefs, aids (*l*), &c.) and act generally as the executive officer of the crown. Hence in London, and other ancient cities which are counties of themselves, two sheriffs were appointed instead of one, that there might be greater security for the due performance of the office (*m*).

Previous to the statute 8 Eliz. c. 16, two counties were often governed by the same sheriff, which is still the case with Cambridge and Huntingdon (*n*); and in like manner the shrievalty of London and Middlesex were very early united, that is, the appointment was vested in the same body, though, as it would seem, not necessarily to be filled by the same individuals.

By charter of Henry I. (*o*), it is granted to the citizens of London to hold Middlesex to farm for £300, upon account to them and their heirs, so that the said citizens should place as sheriff whom they would of themselves; and by the second charter of John (*p*), the shrievalty of both London and Middlesex is granted to the mayor and citizens in fee, at the same rent of £300 per annum.

The corporation, therefore, had a right to place a third person as sheriff of Middlesex, wholly unconnected with

(*h*) 1 Bl. Com. 339.

(*i*) See *ante*, p. 6.

(*k*) Madox's Exch. p. 223; Barrington's Observations on Act, *sup*. Chartas et Stat. de Marib.

(*l*) *Id.* on Magna Charta, c. 14; and Stat. de Scac. 51 Hen. III.

(*m*) Bac. Abr. tit. Sheriff, K.

(*n*) Fortescue de Land. Leg. Ang. by Amos, p. 82, note (*g*).

(*o*) Confirmed by charters of Stephen and Hen. II.

(*p*) 5th July, A. R. 1.

the shrievalty of London ; but it was considered better to place the same officers over both counties, in order that in those disorderly times, by reducing the whole district under one authority, the city might be better defended against the lawless characters who were harboured in the neighbourhood (*q*). The charter of John expressly makes use of the word *sheriffs* in the plural number, while that of Henry I., which only relates to Middlesex, speaks but of one person.

By the charter of John, it was declared that the citizens of London should amongst themselves make sheriffs whom they would, and amove them when they would, and those whom they made sheriffs they should present to the justices of the Exchequer of those things, which to the said sheriffwick appertain, whereof they ought to answer ; and unless they should sufficiently answer and satisfy, the citizens might answer and satisfy the amerciements and farm ; that if the sheriffs commit any offence, subjecting them to any amerciamment, it should not exceed £20, and that without damage to the other citizens in case of the insolvency of the sheriffs ; but if the sheriffs commit any offence subjecting them to loss of life or limb, they should be adjudged according to the law of the city, and this is confirmed in nearly the same terms in the first charter of Henry III. These charters sufficiently show the great responsibility attached to the office of sheriff in those times, and the necessity of the corporation having a sufficient control over them. The duties of the sheriffs, however, are now become, for the most part, merely formal. Their authority as criminal judges was taken away by Magna Charta (*r*), the portion of the revenue of the crown which they now have to collect is very inconsiderable, the modern system of police has superseded their ancient duties of assembling the *posse comitatus* in cases of riot, and the custom of appointing deputies

(*q*) See Strype's Stow, lib. 5, ch. 26.

(*r*) C. 17.

to act for them, both in their judicial and executive capacity, has removed their responsibility in other respects, though they still of course continue personally liable for the acts of their agents, as was evidenced in the late celebrated case of *Stockdale v. Hansard* (s).

The two sheriffs are annually chosen on Midsummer-day in common hall (t), out of persons previously put in nomination, consisting, 1st, of all the aldermen under the chair; 2nd, the persons on the lord mayor's list of nominees; and, 3d, such as are nominated at the time of election by any two electors (u). The office is generally one of competition; but there are several acts of common council imposing penalties for refusal to serve. If the party elected cannot swear himself worth less than £20,000, he is bound to take the office under a penalty of £400 (x).

(s) 8 Dowl. P. C. 474.

(t) See ante, p. 83.

(u) 2 Rep. M. C. p. 36.

(x) Act of Com. Council, 11th June, 1799. See Salk. 142, pl. 1; Ld. Raym. 496; Carth. 480; 5 Mod. 438; 12 Mod. 270. The oath to be taken by the sheriffs at Guildhall on Michaelmas-day, is as follows:—

"Ye shall swear, that ye shall be good and true unto our Sovereign Lady the Queen of England, and unto her heirs and successors; and the franchise of the city of London within and without, ye shall save and maintain to your power; and ye shall well and lawfully keep the shires of London and Middlesex, and the offices that to the same shires appertain to be done, well and lawfully ye shall do after your wit and power; and right ye shall do, as well to poor as rich, and good custom ye shall not break, no evil custom arrere, and the assize of bread, and ale and all other victuals within the franchise of this

city, and without, well and lawfully ye shall keep and do to be kept, and the judgments and executions of your court, ye shall not tarry without cause reasonable; ne right you shall none disturb. The writs that to you come touching the state and franchise of this city, you shall not return till you have showed them to the mayor and the council of this city for the time being, and of them had advisement, and ready you shall be at reasonable warning of the mayor, for keeping of the peace, and maintaining the state of this city, and all other things that belong to your office; and the keeping of the said shires, lawfully you shall do, by you and yours; and the city you shall keep from harm after your power, and the shire of Middlesex, ne the gaol of Newgate you shall not let to farm. As help you God."

"ADDITION.

"Ye shall also swear that ye shall freely give all such rooms and offices

It has been doubted whether, notwithstanding the above charters, the sheriffs can be removed when once elected (*y*); but there are numerous instances of the exercise of such a power by the corporation (*x*), and there are various acts of common council in force both for removal and punishment of the sheriffs, their officers, and servants.

When any question or debate, says Stow, arises between "the sheriffs, and some other belonging to the sheriffs themselves or their officers, it ought and was accustomed to be determined by the mayor and aldermen: because the liberty of the city doth not allow the sheriffs to be judges themselves in their own causes" (*a*); and by an ordinance made in the time of Edward II., reciting "that many evils happen to the commonalty and sheriffs, by the disobedience, ignominy, and rebellion of the sheriffs, their clerks and servants, it was agreed and appointed by the mayor and aldermen, that all sheriffs' clerks and servants be obedient and yielding to their superiors in all lawful things, on pain, on conviction, of being removed from their office without having it again afterwards" (*b*).

In London, the shrievalty is recognised by the superior courts to be performed by two persons, and a return to a writ by one sheriff, is bad (*c*). They are both consi-

of serjeants and yeomen, as shall happen to become void during the time ye shall remain in the office of shrievalty, to such apt and able person and persons, as shall be by you nominated to the lord mayor and court of aldermen, and by them admitted, without any money or other reward to be had, taken, or hoped for in respect thereof, according to the act of council made and provided in that behalf, the 29th day of April, in the 26th year of the reign

of our sovereign Lady Queen Elizabeth, &c. So help you God."

(*y*) Styrpe's Stow, lib. 5, p. 95.

(*x*) See Ordinances and Acts of Common Council, quoted in *id. ib.* and Lib. D. fol. 146; Lib. Leg. fol. 70; Lib. G. fol. 54; Lib. H. fol. 92, Town Clerk's Office; North. Hist. of London, p. 38; Lib. C. fol. 70; and Lib. Horn. fol. 21 b.

(*a*) Styrpe's Stow, *ubi sup.*

(*b*) Lib. Horn. fol. 271.

(*c*) *Lamb v. Wiseman*, Hob. 70.

dered but as one officer, and if one of them die, the other can execute nothing till a new one be chosen (*d*), nor can one sheriff make his return without his fellow (*e*); and though the city compters were formerly under their distinct management, an action for an escape thereout could be brought against them both (*f*). If, however, one of the sheriffs be interested in a cause in London, the fact may be suggested on the roll, and the process of venire directed to the co-sheriff (*g*). As sheriff of Middlesex, however, they stand in a totally different position. The charter of Henry I. grants only the shrievalty of Middlesex generally, and it is left to the citizens to appoint a person or persons to perform it; and it will not be judicially noticed by the courts, that the same persons are appointed to the two offices. Writs have been always directed as before the charter, *viz.* in London to the two sheriffs; and in Middlesex, as if there were one only (*h*); and if a writ be directed to them as sheriffs of London, they have no authority to execute it in Middlesex, and so *e converso* (*i*); and on the same principle, a prisoner in their custody as sheriffs of London cannot be detained by a writ directed to them as sheriff of Middlesex (*k*).

The duties of the two offices are, in fact, perfectly distinct, and performed by distinct deputies. In the city, the judicial functions of the sheriffs in the sheriffs' courts, are performed by a judge or judges appointed by the court of common council (*l*), and most of the ministerial functions by the secondaries (*m*); and in Middlesex, the common functions of sheriff are performed by the under

(*d*) *Curle's case*, 11 Co. 31, Amise, pl. 20; and see 4 Mod. 65.

(*e*) Hob. 70; Litt. Rep. 129.

(*f*) Carth. 145; *Riding v. Edwin*, Show. 162; *Anon.*, 6 Mod. 96.

(*g*) *Rich v. Player*, 2 Show. 287.

(*h*) Bac. Abr. Sheriffs, K.

(*i*) *Hammond v. Taylor*, 3 B. & A. 408.

(*k*) 1 Roll. Abr. 894; *post*, tit. Gaols.

(*l*) For whom, see *post*, tit. Sheriffs' Courts.

(*m*) *Id. ib.*; 2 Rep. M. C. p. 81.

sheriff of Middlesex, annually appointed by the sheriffs, assisted by the deputy in Red Lion Square, who is re-appointed every year (u).

The sheriffs are always considered a part of the municipal government. Stow calls them the *mayor's eyes, seeing and supporting part of the care, which the person of the mayor is not alone sufficient to bear* (o). And in ancient times, when the king went abroad, it was usual to entrust the city to the keeping of the mayor, aldermen, and sheriffs (p); who are also continually required in old proclamations to prevent riots and insurrections within the city. The sheriffs are also, with the lord mayor, nominally the judges of the court of hustings (q); and all proceedings there are entered of record as being heard before them (r).

(u) 2 Rep. M. C. p. 40.

(q) Priv. Lond. 228.

(o) Strype's Stow, lib. 5, ch. 5.

(r) See *Green v. Cole*, 2 Saund.

(p) *Id. ib.*

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CHAPTER XII.

THE POLICE.

Ancient Police Regulations.

THE police of the city of London was originally established, like that of the rest of the kingdom, on the ancient ward or hundred system, partaking more of a military than a civil character; every inhabitant of the ward being obliged, by himself or his substitute, to perform duty under the name of watch and ward, to keep a roll of the names, professions, and callings of all residents, and to give notice of every new comer, and keep watch on suspected persons, who might be required to give security for their good behaviour, or be imprisoned (a).

Besides this standing watch in each ward, there was established from a very early period, for extraordinary occasions, a body called the marching watch, consisting of about 2000 old soldiers, officers, and others, who were mustered regularly at Midsummer, under the mayor and sheriffs, until the end of the reign of Henry VIII., when it was put down, on account of the expense; and the old ward system, in some degree, remodelled (b).

But this does not seem to have been by any means adapted to the altered state of things in the metropolis. The dissolution of the monasteries had, in London, as elsewhere, the effect of throwing as a burthen upon the public, that numerous class of idlers who had hitherto been supported in those religious establishments; and

(a) See *ante*, p. 29; and articles of Wardmote, Inquest, in Priv. Lond. 385, *et seq.*; and Carth. 129, 138. And by Stat. Civ. Lond. 13 Edw. I. st. 5, no one was allowed to walk the streets armed after *curfew*, unless noblemen or their servants with

lights; taverns and alehouses to be shut at *curfew*, fencing schools for buckler not to be kept in London, and none but freemen to keep inns in London.

(b) See Strype's *Stow*, lib. 4, p. 255, *et seq.*

the necessity of some regular system of control over this then really formidable band, was becoming more and more apparent, and gave rise, as we shall see, to the first establishment of the public hospitals (c) in this city.

By an order, dated in April, 1569, the sixteen beadles belonging to these hospitals were directed to clear the streets of vagrants and sturdy beggars, who were to be carried to Bridewell; the sick, lame, blind, and aged, were to be taken to St. Bartholomew's (d); and children beggars, under the age of sixteen, to Christ's Hospital. Regular circuits were appointed for these beadles, and the nature of the duty laid down for their observance, under certain penalties; but this regulation failing of the desired effect, the city marshals (e) were appointed,

(c) See *post*, tit. Hospitals.

(d) Vagrants are still sent to the hospitals; expense thereof, 1840:—

Barth. £96 9 3
172 19 8

(e) North. Hist. of London, lib. 1, ch. 9. About the year 1580, according to Stow (Survey, lib. 5, ch. 30), "the recorder had set up privy searchers in London, for the better finding out loose and dangerous persons, and trusty officers were selected for the purpose, to go about secretly into the obscurer parts, to seek for rogues and thieves; by which course he at last almost cleared the town."

At a sessions in July, 1585, the same recorder in his report mentioned a peculiar case, which rivals any of more modern date. One Wotton, a gentleman born, and formerly a merchant of good credit, having met with a reverse, kept an alehouse at Smart's-key, near Billingsgate, and having his license taken away for some misdemeanour, set up a new trade in life, assembling in the same house all the cutpurses

about the city, and setting up a school to teach young boys to cut purses. A pocket and a purse were hung up; the pocket contained certain counters, and was encompassed with bells; the purse had silver in it, and whoever could take out a counter without any noise, was allowed to be a public *foyster* or pickpocket. And whoever could take a piece of silver out of the purse, without making noise of any of the bells, was adjudged a judicious *sypper* or cutpurse. In this man's house were found hung up some doggrel rhymes in the slang of that day, and amongst others the following, as embodying the principles of his profession:—" *Si spie, sports; si non spie, tunc steal.*" And another, " *Si spie, si non spie, foyste, nypps, lyfte, shave, and spare not.*" The translation of which may, perhaps, be rendered:—"If a spy be present, run; if not, steal;" and "Spy or no spy, pick pockets, cut purses, flich cloaks, and spare not."—*Strype's Stow, ubi sup.*

under whose care, until the recent act of parliament (*f*), the city day police were placed: the upper marshal being high constable of the city, which office he still holds, and the under marshal having the immediate superintendence of the force (*g*). The nightly watch was, however, many years ago, regulated by statute (*h*), though still on the old ward system; whilst the police of the rest of the metropolis were regulated by a great variety of local acts of parliament, having little or no connexion with one another.

On the introduction of the new police system in 1829 (*i*), over the rest of the metropolis, it became more than ever advisable to make some change in the regulations of the police, within the city; and many attempts were made, on the part of the government, to include the city within the metropolitan police district; but the corporation wisely refused to concur, and after a contest unrivalled in modern times, on the part of the citizens, in favour of their ancient constitutional right of self-government, the dispute was ultimately compromised by the passing of the local act, 2 & 3 Vict. cap. XCIV.; by which, with a few exceptions, necessary to secure the rights of the corporation, the city police force is placed upon a nearly uniform plan with that established in the rest of the metropolis (*k*).

The whole management of the city police is placed in the hands of a commissioner, appointed for the city of London, with the sanction of a secretary of state, by the court of common council: and removable by that court, or the crown, for misconduct, or other reasonable cause.—s. 3 (*l*). And this commissioner is directed to appoint

(*f*) 2 & 3 Vict. c. XCIV.

(*g*) 2 Rep. M. C. p. 96.

(*h*) 10 Geo. II. c. 22.

(*i*) By 10 Geo. IV. c. 44.

(*k*) See *id. ib.* 10, and 2 & 3 Vict. c. 47.

(*l*) The metropolitan police, whose district will be described hereafter,

(see *post*, 164), are placed under the control of two commissioners appointed by the crown. 10 Geo. IV. c. 44, s. 1; 2 & 3 Vict. c. 47, s. 4. The 4th and 5th sections of the City Police Act lay down the mode of electing the commissioner. The metropolitan police commissioners are jus-

such sufficient number of fit and able men as the court of common council from time to time direct to constitute a police force for the city and liberties of London (m), to be sworn in as constables for preserving the peace, and preventing robberies and other felonies, and apprehending offenders against the peace, and to have all the powers, authorities, privileges, and advantages, liabilities, duties, and responsibilities, pains and penalties of constables at common law or statute; subject, nevertheless, to the orders and directions of the police commissioner;—s. 9 (n); who is empowered from time to time, subject to the approbation of the mayor and aldermen, or any three of them, and also of one of the secretaries of state, to make regulations relative to the general government of the force, the places of their residence, the classification, rank, and particular service of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessities to be furnished to them, for the performance of their duty; and all other orders and regulations which he may deem expedient for preventing neglect or abuse, and rendering the force efficient in the discharge of its duties. And the com-

mittees of the peace by virtue of their office (10 Geo. IV. c. 44, s. 1), and the city commissioner is authorized to be appointed a justice of the peace, on the joint petition of the court of aldermen and common council (2 & 3 Vict. c. XCIV. s. 6); and he is not to sit in parliament, or be engaged in business, or to serve on juries (s. 7), or vote for the election of members of parliament for London, or any adjoining counties, or any place within the metropolitan police district (s. 8).

(m) In pursuance of this power the court of common council have fixed the present number of the city police at 543. Resolution of Common Council, 17th December, 1840; that is to say, one superintendent, 13

inspectors, 12 station serjeants, 47 serjeants, and 470 constables. The City is divided into six police divisions, at each of which there is a station or watch house. The metropolitan police are appointed by the direction of a secretary of state, and sworn in by the commissioners. 10 Geo. IV. c. 44, s. 4. Their number, on the 1st January, 1840, was in all 4328; that is to say, 19 superintendents, 105 inspectors, 446 serjeants, and 3758 constables of different classes. Return to House of Commons, printed 25th March, 1841.

(n) This section is nearly the same as the 4th section of the Metropolitan Police Act, 10 Geo. IV. c. 44.

missioner is directed to send any returns of the state of crime, and conduct of the force, that the secretary of state or lord mayor may require; and is empowered to suspend or dismiss any man belonging to the force, for remissness, negligence, or unfitness, reporting the same from time to time to the lord mayor; and the powers of such policemen under this act, thereupon immediately cease and determine.—s. 14 (o). The clothes, arms, and other necessities with which he is furnished, must be forthwith returned to the commissioner; and if any such discharged policeman be convicted of neglecting or refusing to return the same, he may be committed to the house of correction for any term not exceeding one calendar month, or until the return of the property.—s. 14 (p).

A penalty of £10, or one month's imprisonment, is imposed for neglect or violation of duty; and a like penalty of £10, in addition to any other present punishment, for unlawfully having possession of any of the police accoutrements, or improperly assuming the character of a policeman.—s. 16 (q).

No constable can resign or leave duty without express permission in writing from his superintendent, or a calendar month's notice, under the penalty of losing his arrears of pay, or a sum not exceeding £5.—s. 17 (r).

The powers given to the police are many of them merely revivals of the ancient powers of the watch and ward, but in some instances much exceed any authority previously conferred by common law or statute.

Any policeman may take into custody without warrant all *loose, idle, and disorderly persons whom he shall find disturbing the public peace*, or whom he shall suspect of having committed or intending to commit a felony, misdemeanour, or breach of the peace, and all other

(o) Corresponding with the 5th section of the 10 Geo. IV. c. 44, excepting that the metropolitan regulations need only be sent to a secretary of state.

(p) There is the same provision in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 16.

(q) *Id. ib.* ss. 14, 17.

(r) *Id. ib.* s. 15.

persons found between sunset and the hour of eight in the forenoon lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves.—s. 18 (s).

Any person assaulting or resisting any man belonging to the force in execution of his duty, or aiding or exciting any person so to do, is liable on conviction to a penalty not exceeding £5 for every offence, or one calendar month's imprisonment, at the discretion of the magistrate.—s. 19 (t).

On the application of the minister or churchwardens of any church, chapel, or other place of public worship within the city and liberties, the commissioner is authorized, with the consent of the court of aldermen, to make orders for regulating the route and conduct of persons driving any stage carriage, cart, cattle, sheep, pigs, or other animals, within such parish or place during the hours of divine service on *Sunday, Christmas-day, Good Friday*, or any day appointed for a public fast or thanksgiving: such orders to be printed and affixed on or near the church, &c. to which the same refer, and in some conspicuous places leading and contiguous thereto, and else-

(s) *Id. ib.* s. 64; and 10 Geo. IV. c. 44, s. 7. The oath of the constable at common law was, that the peace should be duly kept according to his power (Kit. 47); that he would arrest all whom he saw making riots, debates, or affrays (*ib.*); and that he would endeavour, upon complaint, to take felons, bar-rators, and riotous persons (*ib.*); so upon complaint of felony committed he might take up any of bad fame, suspected. 17 Edw. IV. c. 5; Com. Dig. tit. Leet, M. 9. And he might arrest, and detain in prison for examination, night walkers, who go abroad in the night, and sleep in the day, whom there is reasonable ground

to suspect of felony, although there is no proof of a felony having been committed. *Lawrence v. Hedger*, 3 Taunt. 14; and see *Theobald v. Crichmore*, 1 B. & A. 227. Under the police acts it has been decided that a police constable is not justified in laying hold of, pushing along the highway, and ordering to be off, a person found by him conversing in a crowd with another, merely because the person, with whom he so happens to be conversing, is known to be a reputed thief. *Stokes v. Carter*, 4 Carr. & P. 477.

(t) Same provision in Metrop. Police Act, 2 & 3 Vict. c. 47, s. 18.

where, as the commissioner directs : and every breach of the order is deemed a separate offence.—s. 20 (t).

No proprietor of any stage carriage duly licensed to carry passengers for hire is liable to any penalty for any deviation from the route specified in his licence, which the driver shall make by virtue of such regulations.—s. 21 (u).

The commissioner, with the consent of the court of aldermen, may also, from time to time, as occasion requires, make regulations for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstructions of the streets and thoroughfares within the city and liberties, in all times of public processions, public rejoicings, or illuminations, and also to give directions to the constables for keeping order and preventing any obstruction of the thoroughfares in the immediate neighbourhood of the Mansion-house and Guildhall, Royal Exchange, Bank, Post-office, and other places of public resort within the said city and liberties, and in any case when the said city and liberties may be thronged or liable to be obstructed.—s. 22 (x).

Every warrant issued by a city justice may be executed in any part of Middlesex, Surrey, Hertford, Essex, or Kent, in the same manner as warrants of the local magistrates : and the latter are authorized in like manner to be executed within the city.—s. 23 (y). And in case of emergency, the metropolitan police may act within the city of London under the authority of a secretary of state, upon the requisition of the lord mayor ; and the city police may act within the metropolitan district.—s. 24.

In case of the absence of the commissioner from illness or other cause, the officer of the force next in authority is empowered to execute all his duties during such period as the lord mayor may appoint, with the sanction

(t) *Id. ib.* s. 51.

(u) *Id. ib.* s. 53.

(x) *Id. ib.* s. 52.

(y) By the 17th section of the Metropolitan Police Courts Act (2

& 3 Vict. c. 71), warrants of the metropolitan police magistrates may be executed *anywhere* out of the district.

of a secretary of state, with all the authorities and powers of such commissioner.—s. 25.

No licensed victualler or other person is allowed to open his house for the sale of wine, spirits, beer, or other fermented articles on a Sunday, Christmas-day, or Good Friday, before the hour of one in the afternoon, except for refreshment for travellers—s. 26 (u); or to knowingly supply any sort of distilled exciseable liquor to any boy or girl apparently under sixteen years of age, to be drunk on the premises, under a penalty for the first offence not exceeding 20s., for the second 40s., and for every other £5.—s. 27 (x).

Every person having or keeping any house, shop, room, or place of public resort within the limits of the act for the sale of provisions, liquors, or refreshments of any kind, (whether kept or retailed therein or procured elsewhere,) wilfully or knowingly permitting drunkenness, or other disorderly conduct, or any unlawful games or gaming therein, or knowingly permitting prostitutes or persons of notoriously bad character to meet together or remain therein, are liable for every offence to a penalty not exceeding £5: without exemption (if a licensed victualler or seller of beer) from any other penalties or penal consequences—s. 28 (y); and a penalty not exceed-

(u) Same in Metrop. Police Act, 2 & 3 Vict. c. 47, s. 42.

(x) *Id. ib.* s. 43.

(y) *Id. ib.* s. 44. The act 9 Geo. IV. c. 61, for regulation of alehouses did not extend to freemen of the Vintners' Company, becoming so otherwise than by redemption.—s. 36. Many of the provisions now made, however, formed part of the old articles of ward inquest; for instance, "that no huckster of ale or beer, keep any bawdry, or suffer any lechery, dice playing, carding, or any other unlawful games to be done, exercised, or used within their houses."—Art. of Wardm. Inquest,

16; Priv. Lond. 387. And again, the inquest were charged to "diligently provide and foresee, that no manner of person or persons within the ward, of any condition or degree, keeping any tavern or alehouse, ale-cellar, or any other victualling house or place of common resort to eat or drink in, permit or suffer at any time any common women of their bodies, or harlots, to resort or come into their said houses or other places to eat or drink, or abide, or haunt or frequent, on pain of imprisonment of both landlord and guest."—Art. 22; *id. ib.* 390.

ing £10 per day during the continuance of the offence is imposed on any person making or using, or allowing to be made or used, any internal communication between any house, shop, room, or place not licensed for the sale of wine, spirits, beer, or other exciseable articles, and any place which is so licensed, or in which wine is sold by a free vintner.—s. 29 (z).

Any justice or the commissioner may by a written order authorize any superintendent of the force, with such constables as he may think necessary, to enter into any house or room kept or used for stage plays, or dramatic entertainments, into which admission is obtained for money, and not being a licensed theatre, at any time when the same is open for the reception of persons resorting thereto, and to take into custody all persons found therein without lawful excuse; and every person keeping, using, or knowingly letting any house or other tenement for such purpose is liable to a penalty not exceeding £20, or, in the discretion of the justice, may be committed to the house of correction, with or without hard labour, for a time not exceeding two calendar months; and every performer or other person present without lawful excuse, is liable to a penalty not exceeding 40s. without exemption from any other punishment or penalty.—s. 30 (a).

Every person within the limits of the act, keeping, or using, or acting in the management of any house, room, pit, or other place for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs, or other animals, is liable to a penalty not exceeding £5, or in the discretion of the magistrate may be committed to the house of correction, with or without hard labour, for a time not exceeding one calendar month; and any justice or the commissioner may, by written order, authorize any superintendent of the force, with such constables as he thinks necessary, to enter any premises kept or used for

(z) Same clause in 2 & 3 Vict. c. 47, s. 45.

(a) Same provision in Metrop. Police Act, 2 & 3 Vict. c. 47, s. 46.

such purposes, and take into custody all persons found therein, without lawful excuse; and every such person is liable to a penalty not exceeding 5s., without exemption from any other punishment or penalty.—s. 31 (b).

On the report of any superintendent, supported by the affidavit of two householders within the district, that any house or room within the limits of the act is believed to be kept or used as a common gaming house, any justice or the commissioner may, by a written order, authorize the superintendent to enter the same, with such constables as the justice or commissioner may direct, and forcibly break open the doors or otherwise if necessary, and to take into custody all persons found therein, and seize and destroy all tables and instruments of gaming found on the premises, and seize all monies and securities found therein; and the owner or keeper, or other person having the care or management thereof, and every other person acting therein, are liable to a penalty not exceeding £100, or imprisonment in the house of correction, with or without hard labour, for not exceeding six calendar months, at the discretion of the magistrate: and on conviction of any such offender, all monies and securities so seized are to be paid to the city chamberlain for the general purposes of the act; and every person found in such premises without lawful excuse, is liable to a penalty not exceeding £5, without prejudice to any other proceedings; but no person is to be proceeded against both by indictment and under the act—s. 32; and it is not necessary, under the act, to prove that any person found playing at any game was playing for any money, wager, or stake.—s. 33 (c).

Pawnbrokers, or their agents or servants, purchasing or receiving or taking goods or chattels in pawn or pledge from persons apparently under sixteen years of age, are liable to a penalty not exceeding £5.—s. 34 (d).

(b) *Id. ib.* s. 47.

(d) *Id. ib.* s. 50.

(c) *Id. ib.* ss. 48, 49.

The 35th (e) section of the act imposes a penalty, not exceeding 40s. for every offence, on persons guilty of any of the following offences in any thoroughfare or public way within the limits of the act; that is to say (f),

(e) *Id. ib.* s. 54.

(f) Many of these offences are enumerated in the ancient statutes of the streets in London, (see Priv. Lond. 108,) and in the City Sewers' Act, which inflicts a penalty not exceeding £5 on "any person or persons who shall upon any of the footways or pavements within the limits of the act, run, draw, drive, or carry thereon any truck, wheel, sledge, wheelbarrow, handbarrow, bier, or carriage whatsoever, or roll any cask or tub other than for the necessary loading or unloading thereof unto, upon, from or out of any carriage or cart, or wilfully ride, load, or drive any horse or other beast or cattle whatsoever on any of the said footways or foot pavements, or wilfully permitting or suffering any horse or other beast or cattle which such person may be riding, driving, or leading to go thereon, or shall tie or fasten any horse or other cattle to any house, wall, fence, post, tree, or other thing whatsoever across any of the said footways or foot pavements, or hold, set, or place any pole, placard, basket, bag, cask, tub, pail, bucket, stool, bench, showboard, chopping block, stall, goods, wares, merchandize, apparel, or other things on or in the said footway or foot pavement, or erect, set up, put, or place any blind, shade, coverlid, or awning, or any other matter or thing so as in any way to cause any obstruction or impediment in the footway or on the foot pavement, or shall in any street,

lane, square, yard, court, alley, passage, or place within the said limits, hoop, fire, cleanse, wash, or scald any cask or tub, or hew, saw, or cut any stone, wood, or timber, or bore any timber, or make or repair or place or leave or wash or clean any coach, chaise, waggon, sledge, or other carriage, or the wheel, body, springs, or other part thereof, except such as may want immediate repair from any sudden accident on the spot, and which cannot be conveniently removed for that purpose, and also except for the necessary time of any stage coach, hackney coach, or other carriage, let for hire, taking up and setting down any fare, or waiting for passengers when actually hired, so that no stage coach wait for passengers longer than ten minutes, or shoe, bleed, or farry any horse or other beast (unless in case of sudden accident), or clean, dress, drive, or turn loose any horse or other beast or cattle, or show or expose any stallion, or stone-horse (except only in such place as the said commissioners shall direct), or show or exercise or expose to sale any horse or other beast, or kill or slaughter, or scald, singe, dress, or cut up any animal, either wholly or in part, or cause or permit any blood to run from any slaughter house, butcher's shop, or shamble, into the streets, or any of them, or shall sell or assist in selling by auction or public sale, or expose or assist in exposing to sale any cattle, apparel, goods, wares, merchandize, or thing or things whatsoever in any of the

every person, to the annoyance of the inhabitants or passengers, exposing for show or sale (except in a market lawfully appointed for that purpose), or feeding or foddering any horse or other animal, or showing any caravan containing any animal, or any other show or public enter-

said streets, lanes, squares, yards, courts, alleys, passages, or places, or hang up, place, or expose to sale, or cause or permit to be hung up, placed, or exposed to sale any goods, wares, or merchandize whatsoever, or any fruit, vegetables, or garden stuff, butchers' meat, offal, or other matter or thing in or upon or so as to project over or upon the footway or carriage way of any such streets, &c., or beyond the line or on the outside of the window or windows, or in the area or areas of the house, shop, or place at which the same is so hung up, &c., so as to obstruct or incommode the passage of any person or carriage, or leave open after sunset and before sunrise the door or window of any area, cellar, or other underground room or apartment or openings leading to any buildings or premises, without having placed or left a sufficient light therein to warn and prevent persons passing in the said streets, &c., from falling into such cellars or other underground rooms, apartments, or openings, or shall permit or suffer any iron or other plate, commonly called a coal plate, over the vaults or otherwise belonging to any of the houses and premises within the limits of the act to remain loose and unfastened, or shall permit or suffer any gate or gates, door or doors, to open over the footways, or shall not enclose the openings or entrances to the steps leading from the public streets through passages or courts

to cottages or buildings, with proper iron or other gates, or shall not lock up and fasten after daylight and in the night time, the iron or other gates enclosing the areas belonging to the said houses and premises, or openings and entrances as aforesaid, or shall throw at any cock or fowl in the manner called cock-throwing, or set up any cock or fowl to be thrown at in such manner, or play at football or at any other game to the annoyance of any inhabitant or passenger, or shall wilfully break, or aid or abet or assist in wilfully breaking any glass or window panes or windows in or belonging to any dwelling house or building, or cause, make, or assist in making any bonfire, or wantonly discharge or fire off any gun, pistol, or blunderbuss or other fire-arms, or let off, set fire to, or throw any cracker, squib, rocket, or other firework, or occasion any kind of obstruction or annoyance in or upon any such street, &c., or obstruct or incommode, hinder, or prevent the free passage of any footway or causeway, or prejudice or annoy in any manner whatsoever any person or persons travelling, passing, or going thereon within the said limits: and the offender may be apprehended by any constable, or by the commissioners or their servants, without warrant."—4 Geo. IV. c. CXIV. s. 44. Under this clause penalties were very recently inflicted on two dealers in old clothes for annoying the passen-

tainment, or shoeing, bleeding, or farrying any horse or animal (except in cases of accident), or cleaning, dressing, exercising, training, or breaking any horse or animal, or cleaning, making or repairing any part of any cart or carriage, except in cases of accident, where repair on the spot is necessary.

2. Every person turning loose any horse or cattle, or suffering to be at large any unmuzzled ferocious dog, or setting on or urging any dog or other animal to attack, worry, or put in fear any person, horse, or other animal.

3. Every person, by negligence or ill-usage, in driving cattle, causing any mischief to be done by such cattle, or in anywise misbehaving himself in the driving, care, or management of such cattle, or not being hired and employed to drive the same, wantonly and unlawfully driving or hunting such cattle (*g*).

4. Every person having the care of any cart or carriage, riding on any part thereof, or the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or being at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same.

5. Every person riding or driving furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare.

6. Every person causing any cart, public carriage, sledge, truck or barrow, with or without horses, to stand longer than may be necessary for loading, or unloading, or for taking up or setting down passengers, except hackney carriages standing for hire in any place not forbidden by law, or by means of any cart, carriage, sledge, or truck, or barrow, or any horse or other animal, wilfully causing any obstruction in any thoroughfare.

7. Every person leading or riding any horse or other

gers, and obstructing the pavement in Culler Street.—*Re Josephs and Levy*, Mansion House, 7 Oct. 1841.

(*g*) Cattle drovers within the bills

of mortality are regulated by statute 21 Geo. III. c. 67, and are under the control of the court of aldermen.—*Id.* s. 4.

animal, or drawing or driving any cart or carriage, or fastening any horse or other animal, so that it can stand across or upon any footway.

8. Every person drawing or driving any sledge, truck, or barrow upon any footway or curbstone, or rolling or carrying any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard, or placard, upon any footway, except for the purpose of loading and unloading any cart or carriage, or of crossing the footway.

9. Every person who, after being made acquainted with the regulations or directions of the commissioners of police, for regulating the route of horses, carts, carriages, and persons, during the time of divine service, and for preventing obstructions during public processions, and on other occasions specified by the act, wilfully disregards or does not conform himself thereunto.

10. Every person, without the consent of the owner or occupier, affixing any posting bill or other paper against or upon any building, wall, fence, or pale, or writing upon, soiling, defacing, or marking any such building, wall, fence, or pale with chalk or paint, or in any other way whatsoever, or wilfully breaking, destroying, or damaging any part of such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat in any public walk, park, or garden.

11. Every common prostitute (*h*) or nightwalker loiter-

(*h*) The laws relating to this unfortunate class of beings in the metropolis have undergone continued changes, seldom dictated by sound judgment or humanity; and it is very questionable whether the system adopted in many parts of the continent of tolerating the houses for their reception, under proper police regulations, is not, after all, the least unchristian and immoral plan.

By an act of parliament made in the 8 Henry II. the stews in South-

wark were placed under legal regulations, confirmed by various subsequent ordinances, and were not thoroughly destroyed till 1546.—Stow's Survey, lib. 4, p. 6, and Howell's *Londinopolis*, p. 337. A few years after Latimer complained to the king that prostitution was only increased by the destruction of the stews.—Strype's *Stow*, *ubi sup*. At this time the punishment for both bawds and harlots in the city was to be put into a cart, clothed in a

ing or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers.

12. Every person selling or distributing, or offering for sale or distribution, or exhibiting to public view any profane, indecent, or obscene song or ballad, or writing or drawing any indecent or obscene word, figure, or representation, or using any profane, indecent, or obscene language, to the annoyance of the inhabitants or passengers.

13. Every person using any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned.

14. Every person (except the guards and postmen of the Post-office in performance of their duty) blowing any horn, or using any other noisy instrument for the purpose of calling persons together, or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms.

15. Every person wantonly discharging any fire-arms, or throwing or discharging any stone or other missile to the damage or danger of any person, or making any bon-fire, or throwing or setting fire to any firework.

16. Every person wilfully and wantonly disturbing any inhabitant by pulling or ringing any door-bell, or knocking at any door without lawful excuse, or wilfully and unlawfully extinguishing the light of any lamp.

17. Every person flying any kite or playing at any game to the annoyance of the inhabitants or passengers, or making or using any slide upon ice or snow in any street or other thoroughfare, to the common danger of

party-coloured coat, and so drawn through the public streets, and expelled out of the city.—*Id.* lib. 5, p. 317. Hence it has been said that

an action lies in London for calling a woman a whore.—1 Rol. Abr. 560. and *post*, p. 186.

the passengers: and any such person may be taken into custody without warrant.

Any person, except acting in obedience to lawful authority, discharging any cannon or other firearm of greater calibre than a common fowling piece within three hundred yards of any dwelling house within the city and liberties, to the annoyance of any inhabitant thereof; and any person, after being warned of the annoyance by any inhabitant, discharging such firearm, is liable to a penalty not exceeding £5.—s. 36 (i).

Every person found drunk in any street or public thoroughfare, and while drunk guilty of any riotous or indecent behaviour, and also every person guilty of any violent or indecent behaviour in any police station-house, is liable to a penalty not exceeding 40s. for every offence, or instead thereof may be committed, if the convicting justice thinks fit, to the house of correction for not more than seven days.—s. 37 (k).

Every person riding upon or causing himself to be carried or drawn by any carriage within the city and liberties without consent of the owner or driver, is liable to a penalty not exceeding 5s.; or, if a child apparently under twelve years of age, may be detained by the justice until his parent or guardian can attend for the purpose of having it delivered into his care; or if the parent or guardian do not attend before the rising of the court, may be discharged.—s. 38 (l).

Every person using any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow, is liable to a penalty of 40s. for the first offence, and not exceeding £5 for every subsequent one.—s. 39 (m).

Any householder within the city and liberties may either personally, or by his servant, or a police constable,

(i) Metropolitan Police Act, 2 &
3 Vict. c. 47, s. 55.

(k) *Id. ib.* s. 58.

(l) *Id. ib.* s. 59.

(m) *Id. ib.* s. 56.

require any street musician to depart from the neighbourhood of his house on account of the illness of any inmate, or other reasonable cause; and every person sounding or playing upon any musical instrument in any thoroughfare near any house after such notice, is liable to a penalty not exceeding 40s.—s. 40 (n).

Every person within the city and liberties guilty of any of the following offences, is liable to a penalty not exceeding 40s. for every offence; (that is to say) (o),—

1. Burning, dressing, or cleansing any cork or hoop, cleansing, firing, washing, or scalding any cask or tub, or hewing, sawing, boring, or cutting any timber or stone, or slacking, sifting, screening any lime on the thoroughfare.

2. Throwing or laying in any thoroughfare any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials, — (except building materials, or rubbish thereby occasioned, placed or enclosed so as to prevent mischief to passengers).

3. Beating or shaking in any thoroughfare any carpet, rug, or mat (except door mats before the hour of eight in the morning), or throwing or laying there any dirt, litter or ashes, or carrion, fish, offal, or rubbish, or throwing or causing any such thing to fall into any sewer, pipe, or drain, or into any well, stream, or watercourse, pond, or reservoir for water, or causing any offensive matter to run from any manufactory, brewery, slaughterhouse, butcher's shop, or dunghill, into any thoroughfare, or any uncovered place, whether or not surrounded by a wall or fence; but it is not deemed an offence to lay sand or other materials in any thoroughfare in time of frost to prevent accidents, or litter or other materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things cause them to be removed as soon as the occasion for them ceases.

(n) *Id. ib. s. 57.*

(o) *Id. ib. s. 60.*

4. Emptying or beginning to empty any privy or pigsty, between the hours of six in the morning and twelve at night, or removing along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or at any time using for any such purpose, any cart or carriage not having a proper covering, or wilfully or carelessly slopping or spilling any such offensive matter in the removal thereof, or not carefully sweeping and clearing every place in which any such offensive matter is placed, slopped, or spilled; and in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose is deemed the offender: with a reservation, however, in favour of the commissioners of sewers, and any person acting in their service or by their direction.

5. Keeping any pigsty in the front of any street, not being shut out from such street by a sufficient wall or fence, or keeping any swine in or near any street, or in any dwelling, so as to be a common nuisance.

6. Occupiers of houses or other tenements not keeping sufficiently swept and cleansed all adjoining footways and watercourses; and in case of any tenement being empty, the owner is deemed the occupier with reference to this enactment.

7. Exposing any thing for sale in any park or public garden, unless with the consent of the owner or other person authorized to give such consent, or upon, or so as to hang over any carriageway or footway, or on the outside of any house or shop, or setting up or continuing any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare.

8. To the danger of passengers in any thoroughfare, leaving open any vault or cellar, or the entrance from any thoroughfare to any cellar or room underground, without a sufficient fence or handrail, or leaving defec-

tive the door, window, or other covering of any vault or cellar, or not sufficiently fencing any area, pit, or sewer, left open in or adjoining to any thoroughfare, or leaving such open area, pit, or sewer, without a sufficient light after sunset, to warn and prevent persons from falling thereinto.

Any such constable may destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state; and the owner of any such dog or animal, permitting the same to go at large after having information, or reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, is liable to a penalty not exceeding £5.—s. 42 (p).

Every offender against the act, within the city and liberties, who shall have caused any hurt or damage to any person or property, may be apprehended with or without any warrant, by any constable; and if he shall not, upon demand, make amends for such hurt or damage to the satisfaction of the person aggrieved, he may be detained by the constable in order to be taken before a justice, and upon conviction, must pay such reasonable sum therefor, as the justice may think fit, not exceeding £10, beside any other penalty, and the evidence of the party grieved is admissible; but if the only evidence, the sum awarded is applicable as an ordinary penalty.—s. 43 (q).

Any constable belonging to the force, and all persons called by him to his assistance, may take into custody without warrant, any person within his view, offending in any manner against the act, and whose name and residence are unknown, and cannot be ascertained (r)—s. 44; or any person unloading, putting, or throwing any rubbish, earth, ashes, dirt, or soil, into any part of the river

(p) *Id. ib.* s. 61.

(r) *Id. ib.* s. 63.

(q) *Id. ib.* s. 63.

Thames, locally situate within the limits of the said city and liberties (s)—s. 45; or any person within the city or liberties charged by any other person with committing any aggravated assault in every case when such constable has good reason to believe the assault to have been committed, although not within his view, and by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender (t).—s. 46.

Any constable may stop and detain until due inquiry be made, all carts and carriages which he shall find employed in removing the furniture of any house or lodging, between the hours of eight in the evening and six in the morning, or whenever the constable shall have good grounds for believing such removal to be made for the purpose of evading the payment of rent (u)—s. 47. And any person committing any offence, punishable either

(s) The city of London being conservators of the Thames both within and without the city, this clause should not have been confined to the city only, particularly as there is no corresponding clause in the Metropolitan Police Acts.

(t) Same clause in Metropolitan Police Act, 2 & 3 Vict. c. 4, s. 65. The common law gives to the constable no power to arrest without a warrant, for an affray, unless the same take place in his presence, 2 Ld. Raym. 1301; and is continuing at the time of apprehension. *Howell v. Jackson*, 6 Car. & P. 723; *Cook v. Neithercote*, 6 Car. & P. 743.

(u) Same clause as to metropolitan police, 2 & 3 Vict. c. 47, s. 67. This is a very salutary mode of enforcing the 11 Geo. II. c. 19, for preventing the clandestine removal of goods. The landlord is by the latter statute empowered to follow the goods and distrain them where-

ever found; but previous to this provision, property was very easily removed out of the landlord's reach. The removal must take place *after* the rent become due. *Watson v. Maine*, 3 Esp. 16; *Furneaux v. Foikerby*, 4 Campb. 136; but in the latter case, Lord Ellenborough said, "that where goods are fraudulently removed from the premises in the night, to prevent the landlord from distraining upon them for the arrears of rent to become due next morning, the case certainly comes within the mischief intended to be remedied by the statute, and there is some ground to contend that it comes within its provisions." It would, therefore, seem that as far as the police are concerned, it would be immaterial whether the rent were actually due at the time of removal or not, if the evident intention were to avoid payment of the rent.

upon indictment, or as a misdemeanour, upon summary conviction, by virtue of this act, may be taken into custody without a warrant, by any constable, or may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant, or any person authorized by him; and detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every constable may stop, search, and detain any vessel, boat, cart, or carriage, in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found; and also any person who may be reasonably suspected of having, or conveying in any manner, anything stolen or unlawfully obtained; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he have reasonable cause to suspect that any offence has been committed with respect to the property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is authorized, and if in his power, is required, to apprehend and detain, and as soon as may be to deliver such offender into the custody of a constable, together with such property, to be dealt with according to law (x).—s. 48.

Any horse, cart, carriage, or boat, or any other animal or thing in the charge of a person taken into custody, may be taken charge of by the constable, and deposited in

(x) Similar section in Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 66. By the common law, any person may without warrant apprehend a thief in the *mainour*, that is, with stolen goods actually in his possession or the like, 1 Show. 24; or a party committing felony in the night, *Rex v. Hunt*, R. & M.C.C. 93, or playing with false dice, or other indictable fraud against the public, Sir W. Jones, 249; Com. Dig. Pleader, 3 M. 22; but not gene-

rally for a mere misdemeanour unattended with violence, as perjury or libel, *Rex v. Wilkes*, 2 Wils. 159; 2 Salk. 698; Fortes. 140. The powers given by the act of parliament supply the most important defect in the old law, that of being unable to act on mere suspicion, however strong. The 39 & 40 Geo. III. c. 99, had previously authorized pawnbrokers to detain persons offering goods supposed to be stolen.

some place of safe custody, as a security for payment of any penalty the person in custody may be liable to, and for the expenses incurred; and any magistrate may, on default of payment, order the same to be sold as a distress (*y*).—s. 49.

All persons apprehended without warrant (except when for the mere purpose of ascertaining their name and address) must be taken to the nearest station house for safe custody, until the complaint is heard, or bail be given.—s. 50 (*z*).

The constable in charge of the station-house has power to take recognizances for appearance to answer petty charges (*a*),—s. 51; and to bind over prosecutors to appear in cases of felony or other grave misdemeanours; or upon their refusal, he may discharge the person charged on his recognizance, with or without sureties (*b*).—s. 52. Entries must be made in the proper book at the station-house, of the name, residence, and occupation of the party, and his surety or sureties, entering into the recognizance, and the terms thereof; and the recognizance must be handed over to the justice before whom the party is to appear, and in default of his appearance within one hour from the time appointed, the recognizance is handed over to the clerk of the peace as forfeited (*c*).—s. 53.

For every misdemeanour, or other offence against the act for which no special penalty is appointed, the offender may, at the magistrate's discretion, be fined, not exceeding £5, or imprisoned in the house of correction for not exceeding one calendar month.—s. 54 (*d*).

All fines, penalties, and forfeitures inflicted or imposed by this act (the manner of levying and recovering whereof is not otherwise particularly directed), may, in case of non-payment thereof, be recovered in a summary way by the order and adjudication of any city justice of the

(*y*) Same clause in 2 & 3 Vict.
c. 47, s. 68.

(*z*) *Id. ib.* s. 69.

(*a*) *Id. ib.* s. 70.

(*b*) *Id. ib.* s. 71.

(*c*) *Id. ib.* s. 72.

(*d*) *Id. ib.* s. 73.

peace, and afterwards levied, as well as the costs of the proceedings on non-payment, by distress and sale of goods and chattels of the offender or person liable, by warrant under the hand and seal of such justice, who is authorized and required to summon and examine any witness upon oath concerning such offences, matters, and things, and hear and determine the same; and the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture, costs and expenses, must be rendered to the owner; all which penalties, not otherwise directed to be applied, must be paid to the city chamberlain for the general purposes of the act; and the justice may order the offender so convicted to be detained in safe custody until the warrant of distress can be conveniently returned, unless sufficient security be given for his appearance on the return of such warrant, not being more than eight days from the time of taking such security, which security is by way of recognizance or otherwise, in the discretion of the justices; or in default of effects to satisfy the warrant, the offender may be committed without issuing the same in the same manner as on a return of *nulla bona* thereto.—s. 97.

The convicting justice may give time to pay the penalty, and in default of payment, commit the offender to Bridewell or the house of correction, for any term not exceeding one calendar month, when the sum does not exceed £5, the imprisonment to cease on payment of the sum due and costs.—s. 98.

The form of the conviction is given, s. 99. The justices are empowered to summon both for penalties and the police rates (e), without a written information—s. 100; and a power of appeal is given to the general or quarter sessions within three months after the cause of complaint arises, unless the same arise within fourteen days preceding the sessions, in which case such appeal may be brought at the next sessions, and judgment be given

(e) See *ante*, p. 103.

with costs; but fourteen days' notice must be given thereof, and the appellant enter into a recognizance before any city justice in £20, with two sufficient sureties of £10 to prosecute, and pay the costs of the appeal in case of losing the same—s. 101; and persons paying the police rate, being freemen, are not incompetent as witnesses or justices—s. 102; and no proceeding can be quashed for informality, or defect in the warrant—s. 103.

The corporation maintain no police force upon the Thames. By authority of various acts of parliament (*f*), a police office and sitting magistrate were formerly provided at Wapping, with power to appoint constables and police surveyors, to act upon the river, and on the quays and passages adjoining; the whole expense beyond the amount of fees and penalties levied under the act, not exceeding £8,600, was charged on the consolidated fund.

No powers of any kind were given to the corporation by these acts, but they contained a saving clause of the city rights and privileges with respect to the conservancy of the river, and were declared not to prevent the lord mayor, aldermen, and recorder from acting as justices of peace on the river, or taking cognizance of offences committed thereon.

By the last Metropolitan Police Act (*g*), the powers of the constables of that force are extended to the river Thames, within or adjoining to the several counties of Middlesex, Surrey, Berkshire, Essex, and Kent, and within or adjoining to the city and liberties of London, and in and on the several creeks, inlets, and waters, docks, wharfs, quays, and landing places, thereto adjacent.—s. 24.

Persons using, working, or navigating boats upon the

(*f*) 54 Geo. III. c. 187; 1 Geo. 45; and 3 Will. IV. c. 19.
IV. c. 66; 1 & 2 Geo. IV. c. 118; (*g*) 2 & 3 Vict. c. 47, s. 5.
3 Geo. IV. c. 55; 10 Geo. IV. c.

Thames, for the purpose of selling, disposing of, or exposing to sale among persons employed in ships or vessels on the river, liquors, slops, or other articles, between London Bridge and Limehouse Hole, are declared within the provisions of the Waterman's Act.—s. 25.

Persons within the metropolitan police district, knowingly receiving from seamen or other unauthorized persons, any part of the cargo or ship stores of vessels lying in the Thames or any of the docks or creeks adjacent thereto, or unlawfully cutting, damaging, or destroying any of the ropes, cables, cordage, tackle, headfasts, or other furniture of ships, boats, or vessels lying in the river Thames, or in any of the docks or creeks adjacent thereto, with intent to steal or otherwise unlawfully obtain the same, or any part thereof—are declared guilty of a misdemeanor.—ss. 26, 7.

And any constable is authorized to take into custody every person, who for the purpose of preventing the seizure or discovery of such stores, &c., shall wilfully let fall or throw into the river, or in any manner convey away from any ship, boat, or vessel, wharf, quay, or landing-place, any such article, or be accessory to any such offence, and also to seize and detain any boat in which such person shall be found, or out of which any article shall be so let fall, thrown, or conveyed away; and every such person is deemed guilty of a misdemeanor.—s. 28.

So, also, are all persons found in or upon any canal, dock, warehouse, wharf, quay, or bank, or on board any ship or vessel, in possession of tubes, skins, bladders, or other instruments for unlawfully procuring or carrying away wine, spirits, or other liquors, or unlawfully attempting to obtain such wine, &c.—s. 30; or boring, piercing, breaking, cutting open or otherwise injuring any cask, box, or package containing wine, spirits, or other liquors, on board any ship, boat, or vessel, or in or upon any warehouse, wharf, quay, or bank, with intent feloniously to steal or otherwise unlawfully obtain any part of the contents thereof, or unlawfully drinking, or

wilfully spilling, or allowing to run to waste, any part of the contents thereof—s. 31; or wilfully causing to be broken, pierced, started, cut, torn, or otherwise injured, any cask, chest, bag, or other package containing or prepared for containing any goods, while on board of any barge, lighter, or other craft lying in the said river, or any dock, creek, quay, wharf, or landing-place adjacent to the same, or in the way to or from any warehouse, with intent that the contents of such package, or any part thereof, may be spilled or dropped from such package—s. 32.

Any superintendent or inspector of the force is authorized, at all times, by night or day, with such constables as he may think necessary, to enter every vessel (not then actually employed in Her Majesty's service,) lying in the said river or creeks, or in any dock or docks adjacent thereto, and into every part of such vessel, for the purpose of inspecting, and upon occasion, directing the conduct of any constable stationed on board, or of inspecting and observing the conduct of all other persons employed in lading or unlading; or of providing against fire or other accidents, and preserving peace and good order, or the prevention or detection of felonies or misdemeanors—s. 33; and any such superintendent, inspector, or serjeant, may go on board any vessel for the purpose of the prevention or detection of felonies, and take into custody all persons suspected of being concerned therein, and take charge of all property suspected to be stolen—s. 34.

The superintendents and inspectors are also authorized—s. 35, with such constables as they think proper, at any time between sunrise and sunset, to enter any such vessel, (except Her Majesty's ships), and search for unlawful quantities of gunpowder, found on board, and the barrels or other packages containing the same, with similar powers to those given by the Gunpowder Act (g).

No vessel (except Her Majesty's ships) is allowed, while lying in the Thames, between Westminster Bridge and Blackwall, to keep loaded guns on board, under a penalty of five shillings for every offence, and ten shillings for firing the same before sunrising, or after sunset, and a penalty of five pounds for every offence is inflicted for heating combustible matters on board (*h*).—s. 37.

By the 10 Geo. IV. c. 44, the metropolitan police district included the city of Westminster, and various places in Middlesex, Surrey, and Kent, enumerated in the schedule of that act, and by the 2 & 3 Vict. c. 47, s. 2, power is given to the Queen in council, to extend the district to all places forming part of the Central Criminal Court district(*i*), exclusive of that part within the city police district; and to any part of any parish, township, precinct, or place, not exceeding fifteen miles distance from Charing Cross in a straight line; although the whole of the parish, &c. be not included; and by an order in council, dated 3d January, 1840, various places have been included accordingly, embracing very nearly a circle of ninety miles in circumference, formed by a radius of fifteen miles from Charing Cross, and divided into seventeen divisions, distinguished by the letters of the alphabet, from A to V, each varying in superficial extent, according to local circumstances; but the number of men and officers, and the constitution of the force, is in each case the same. The City of London is divided into six police districts, at each of which there is a station or watch-house, and a plan is in progress of providing an appropriate building in each district, in which all charges may be received; persons who are apprehended, classed and secured; and a considerable portion of the force lodged with accommo-

[(*h*) 2 & 3 Vict. c. 47, s. 36.

(*i*) See *post*, Central Criminal Court.

dations for their dietary, and apartments for one or more of the officers (*k*).

Each district is divided into sections, and each section into day and night beats, the limits of which are clearly defined, and the number and description of each section and beat is entered in a book kept for the purpose, both at the principal office and at the station-house of the district. The book also contains a statement of the time allotted for the perambulation of each beat, so that any inhabitant applying at the station-house, may ascertain the time within which, both by day and by night, his house ought to be passed by the constable on his beat, in his usual tour of duty, and any person requiring the aid of a policeman, by remaining on the same spot, will be sure to meet one within the limited time.

The regulations for the government of the police, established by the different commissioners, are, it is believed, nearly uniform, but owing to the circumstance of these being both under revision at the time of the present work going to press, only a very cursory view can be given of them here.

The superintendents have the general management of the force under their control, the inspectors by turns to remain on duty at the station-house, for the purpose of receiving charges against offenders (*l*); the serjeants to marshal the men within their section, form them into ranks, march with them to their duties, and go round to see every constable relieve the man previously on duty, keeping regular entries of the proper times for that purpose, and reporting any misconduct of the men to the inspector.

The men are prohibited, under pain of fine or dismissal,

(*k*) The station-houses at present in use in the city are as under :—

1st District, Moor Lane.

2nd District, Smithfield.

3rd District, Black Horse Court,
Fleet Street.

4th District, Watling Street.

5th District, Tower.

6th District, Bishopsgate Church-
yard.

(*l*) See *ante*, p. 159.

while on duty, from giving way to drunkenness, or even entering a public-house (m); or conversing with females, unless in discharge of their duty, or smoking, or carrying sticks or umbrellas, or telling a falsehood, or concealing their numbers; and an abstract of the police laws is furnished them for their general guidance.

(m) A penalty not exceeding £5 is inflicted on any victualler or seller of liquors, knowingly harbour- ing or entertaining any policeman while on duty.—10 Geo. IV. c. 44, s. 6.

CHAPTER XIII.

THE COURTS OF LAW BELONGING TO THE CITY
OF LONDON.

HAVING thus described the leading features of the constitution and municipal government of the City of London, it next becomes necessary to treat of the local courts of justice, which have ever been regarded as an essential portion of the civic franchises; and though much of the exclusive jurisdiction formerly enjoyed by these tribunals has of late years yielded to that of the superior courts, yet the present prevailing feeling in favour of local courts of justice, the peculiar jurisdiction of those established in the City of London, the learning and experience of the judges, and the cheapness, expedition, and simplicity that characterize their proceedings, must, whenever the corporation carry into effect the design they have so long entertained, of removing the restriction on the number of practitioners (a), doubtless

(a) By the present constitution of the hustings, mayor's, and sheriffs' courts, four barristers, called common pleaders, are entitled to appear as counsel in every cause (2 Rep. M. C. p. 131); and no attorney, except the four attorneys, or clerks of the lord mayor's court, can practise at all in either of the first two courts.—*Id.* *ib.* p. 128. It does not appear how long this has been the case, but by the 9th charter of Henry III. it is expressly provided that strangers, as well as others, should make their attorneys to plead and defend in these tribunals as elsewhere in the king's courts.—4 Inst. 252. The

practice of the sheriffs' courts was, by act of common council, 8th December, 1832, opened to all attorneys free of the city, on being admitted for that purpose. And by a resolution of the court of common council, dated 12th April, 1838, it was referred to a committee to consider of a general plan for the improvement of all the city courts, and opening them generally to the profession. The County Courts Bill, introduced by the late ministry, was not proposed to extend to the city, although it included the Southwark court of record, and other local tribunals.

cause to be brought back to these tribunals, a great part of their legitimate jurisdiction, to the very material advantage of the citizens and the public at large.

It was a leading principle of our ancient common law, that justice should be administered at every man's own door, in the presence of his neighbours (*b*); who were considered the best qualified to judge, both of the matter in dispute and the character of the parties; and this principle continued to be tacitly admitted long after the Saxon local courts had gone into disuse, and the administration of justice become in a great degree monopolized by the superior courts at Westminster: for the jury were, until a comparatively recent period, always directed to be chosen from the immediate *venue* or neighbourhood of the parties, and every material fact consequently obliged to be alleged in the pleadings, as happening within such *venue* (*c*).

However, in the instance of the City of London and other privileged places, the king's courts were never suffered to destroy the jurisdiction of the original and legitimate local tribunals. The privilege of the citizens to be sued only in their own courts is continually confirmed by the early London charters (*d*); but as the more frequent legal remedies in use in those times were real actions, and the simple forms of proceeding now adopted in personal actions are of comparatively modern invention, and the creatures almost exclusively of the superior courts, the latter, in their anxiety to secure the jurisdiction therein to themselves, have by degrees most mate-

(*b*) Mirror of Justices, ch. 1, s. 3.

(*c*) Co. Litt. 125 a. note 2; Bac. Abr. Visne or Venue (E). The statute 4 Ann. c. 16, s. 6, directed that the jury should be chosen from the body of the county, instead of from the particular *venue* of parish, town, or hamlet. Stephen on Pleading, ch. 2, p. 314, 4th edit. The old principle, however, remained

with respect to criminal trials, until the 6 Geo. IV. c. 50, s. 13, declared that the want of *Amendments* should be no cause of challenge. The new rules of pleading have now prohibited the statement of the *venue* at all in the body of the pleadings. Reg. Gen. H. T. 4 Will. IV.

(*d*) Charters 1 Hen. I., and 9 Hen. III., *ante*, p. 68.

rially infringed on the civic franchises. Thus it has been repeatedly held, that the exclusive privilege of the citizens does not extend to mere *transitory* actions, such as those relating to debts or contracts (*e*), unless it appear on the face of the pleadings, that the cause of action actually arose in London (*f*); and even then the defendant must aver that he dwells within the city, or has some local property therein, whereby he may be distrained to appear and answer the judgment (*g*), nor would of course the plea be allowed, if it should appear that a failure of justice would follow, as in cases of personal interest or prejudice (*h*): and it is further held, that the privilege is to be considered altogether personal to the *defendant*; and that, consequently, he may waive it, if he thinks fit, and remove his suit into the superior courts (*i*).

All this is in consonance with the doctrine constantly laid down by the superior courts, that any claim of privilege by which it is sought to deprive them of their jurisdiction, should be extremely disfavoured, and the parties setting it up bound to establish it *strictissimo jure* (*k*). Where, however, the legal remedy is founded solely on the customs of London, the city courts have the prior cognizance (*l*); and it would altogether be a most desirable improvement if the prior jurisdiction of the local tribunals were re-established in cases involving a small amount of property, and the expenses of a trial in the superior courts in such cases to be at the discretion of the judge.

(*e*) Tidd's Practice, vol. 1, p. 634, and authorities; 1 Chitty on Pleading, p. 373, and authorities.

(*f*) *Ibid.* p. 431, and authorities.

(*g*) *Ib.* pp. 432, 433; Tidd, vol. 1, p. 633.

(*h*) *Id.* *ib.*

(*i*) Salk. Rep. p. 148; Ld. Raym. Rep. vol. 2, p. 836.

(*k*) Willis, Rep. 233; 2 Wilson, 410; 5 Burr. 1820; 1 Tidd's Practice, pp. 635, 638, 639.

(*l*) Tidd, pp. 469, 470, and authorities.

The Court of Hustings.

The two courts in existence in each county in the time of the Saxons were the *folkmote* for criminal causes, now called the sheriff's *tourn* or *leet*, and the *sciremote* for civil suits (*m*), and similar courts, under the name of the hustings and *folkmote*, are mentioned in the earliest of the London charters (*n*).

The hustings is the county court of London (*o*), and as such has all the powers incident thereto, and retains a great deal of the now obsolete jurisdiction of the ancient *sciremote*. The word *hustings* signifies, in the Saxon language, the house of causes or things (*p*), or a general council or court (*q*). Courts of that name are mentioned in the charters of Great Yarmouth, Lincoln, York, and Norwich (*r*), and the name is to this day given to the temporary courts held for the election of members of parliament in every county and borough (*s*).

The court of hustings is considered the highest court of judicature in the City of London (*t*). The presiding judges are the lord mayor and sheriffs (*u*); but there are acts of common council in existence authorizing the sheriffs, or either of them, with any alderman who has passed the chair, or any six aldermen, to preside in case of the illness or necessary absence of the lord mayor (*x*). The recorder, however, though not technically considered a judge of the court, always attends as assessor to

(*m*) 2 Inst. 69; Dav. 60 a.

(*n*) Charters of Henry I. and II.

(*o*) *King v. Serjeant*, Ca. Temp. Will. III. p. 320.

(*p*) Spelm. Gloss. *voc.* Hustings.

(*q*) Fortescue, *pref.* to Monarchy, 59.

(*r*) 4 Inst. 247; Whittaker's Manchester, ch. 7, s. 1, p. 209; Brady on Boroughs, No. 2, 17, 20, 21, and 22.

(*s*) See *Morris v. Burdett*, 1 Campb. 218, and 2 M. & S. 212; *Morris v. Ld. Cochrane*, 1 M. & S. 283; *Same v. Hunt*, 1 Chitty, 453.

(*t*) 2 Inst. 322; 4 Inst. 247.

(*u*) Priv. Lond. 228.

(*x*) Act of Common Council, 29th April, 26th Eliz., see *Markwick v. London* (in Error), 1 Bro. P. C. 218.

the presiding judges, to examine the witnesses and deliver the judgments (*y*); and, as we have seen, is exclusively empowered to pronounce the judgment (*z*).

The court of hustings has jurisdiction over all real and mixed actions, except ejectment; but not in actions merely personal, except by way of appeal from the sheriffs' courts (*a*). It is directed by various charters (*b*) to be held on every Monday, which was afterwards altered to Tuesday, on account of the presence of the sheriffs being required on the former day at the markets (*c*); but the proceedings were, until the new rules of pleading, always entitled and legally presumed to be held on the Monday (*d*). The courts are still held on alternate Tuesdays throughout the year, on one day for hustings of pleas of land, and on the other for common pleas, saving according to ancient usage, certain times and festival days, and other reasonable causes (*e*).

When real actions were in fashion, this court doubtless enjoyed a very considerable practice. No real actions relating to lands in London could be brought except in this court (*f*), or be removed out of it by *tolt* or *pone*—and if, as was very often done to deprive the local courts of their jurisdiction, the defendant vouched to warranty,

(*y*) 2 Rep. M. C. p. 123.

(*z*) See *ante*, p. 118.

(*a*) Emerson's City Courts, p. 16.

(*b*) Laws of Edward the Confessor, Wilk. Leg. Sax. p. 65; Charters 1 Hen. I., and 1 Hen. II.

(*c*) 2 Stow, 466.

(*d*) This was so strictly the case, that an act of common council was considered necessary to enable courts to be held on Tuesday, when Monday had been a *dies non*. See Act of Common Council, 9 October, 4 Edw. III.; Emerson's City Courts, p. 14.

(*e*) See Calth. Customs of Lon-

don, p. 80. The proceedings of the hustings are entered thus: "Pleas of land (or common pleas) holden in Guildhall on Monday the feast of, or next before, or next after, the feast of," &c. Emerson's City Courts, p. 2; and see Rastall's Entries, 303 a. 334 b.; and this form, it would appear, is not altered by the rules of Hilary Term, 4 W. IV. which only relate to actions in the superior courts; see 3 & 4 Will. IV. c. 4, s. 1.

(*f*) 4 Inst. 247; F. N. B. 6 f.; 3 Leon. 148, pl. 197; Dier, 15 Eliz. 317; 2 Inst. 324.

i. e. to uphold his title to the land, a party out of the jurisdiction of the court, or pleaded a foreign plea, by putting in issue facts which the city courts had no power to determine, such as a plea of judgment recovered in the superior courts, or the plea in dower of *ne unques accouple en loial matrimoine*, which, it is said, can only be proved by the certificate of the diocesan (g), the suit was removed into the superior courts until such extrinsic matters had been determined, and then remanded back to the hustings to proceed in the ordinary way (h).

The books contain a long list of now obsolete forms of action, which might be commenced in the court of hustings, such as writs of right patent, writ of right in London, writs of *entry sur disseisin*, waste (i), partition (k), *quid juris clamat* and *per quæ servitia*, writ of *ex gravi querela* (l) for lands devised by will, and *gavelet* (m) for rent, besides other kinds of process called the assize of *mort d'ancestor*, and *novel disseisin*, or *fresh force in London*, arising out of this court, and determinable before the sheriffs and coroner (n).

The late statute, however, has now abolished all real and mixed actions except dower, *quare impedit*, and ejectment (o); and in the latter form of action the court of hustings has no jurisdiction (p). The two other forms of proceeding may, however, of course, be still commenced in this court; and the writ of dower, if adopted at all for lands in London, must be prosecuted here (q).

¹ (g) See Stephen on Pleading, p. 113, 4th edit.

(h) Stat. of Gloucester, 6 Edw. I. ch. 12; 9 Edw. II. ch. 12; 4 Inst. 247; F. N. B. 6 e.; 2 Inst. 324, *et seq.*, and cases there cited.

(i) 2 Inst. 299; *Green v. Cole*, 2 Saund. 252.

(k) F. N. B. 62 b.

(l) Lex Lond. 105; Bac. Abr. tit. Courts of London; Priv. Lond. 159; Cro. Car. 396; 7 Dal. 117;

F. N. B. 199.

(m) Co. Lit. 142 a. n. (2).

(n) Lex Lond. 105; Bac. Abr. tit. Courts of London; Priv. Lond. 136, &c.

(o) 3 & 4 Will. IV. c. 27, s. 36.

(p) Emerson's City Courts, p. 16; 2 Rep. M. C. p. 123.

(q) See *ante*, p. 168; and 2 Inst. 326; and the City Book, Lib. G. fol. 7, anno 24 Edw. III.

The court of hustings is the only court of appeal from the sheriffs' court (r), to reverse a judgment of that court, and the following is laid down (s) as the mode of proceeding in such cases.

A writ of error is made out by the cursitor for London, and directed to the mayor and sheriffs, and when sealed, must be delivered to the town clerk for allowance, when the plaintiff in error is compelled to enter into a bond, with two sufficient sureties, to prosecute the writ of error with effect (t), or to pay the debt, or damages, and costs recovered. The town clerk then makes out a *supersedeas*, directed to the sheriffs, to stay further proceedings upon the judgment (u); and a *certiorari* must be moved for at the next hustings of common pleas, after the allowance of the writ returnable in fourteen days, when errors may be assigned and argued; and in default of proceeding, a *remandetur* or warrant in the nature of a *procedendo* may be issued to the sheriffs to proceed (x).

If, however, the parties are dissatisfied with the decision of the court of hustings, they may have another writ of error returnable in the court of St. Martin's le Grand (y), before certain commissioners, who are usually five of the judges of the superior courts, from whose judgment a writ of error lies again, if required, to the House of Lords as the *dernier resort* (z).

(r) Pract. Reg. 124; 4 Inst. 247; F. N. B. 23 a.; *Markwick v. City of London*, 1 Brown, P. C. 217; *Ballard v. Bennett*, 2 Burr. 777; Bohun's Priv. Lond. 238, 310.

(s) Priv. Lond. 238; Fitz. N. B. 22; H. 23, A. B. There is no instance of such a proceeding within the memory of the present officers. 2 Rep. M. C. p. 130.

(t) See *Lowfield v. Satchwell*, 1 Wils. 123.

(u) F. N. B. 23 D.

(x) Boh. Priv. Lond. 235, 8, 9.

(y) 1 Rol. Ab. 745; 1 Lev. 309; *Green v. Cole*, 2 Saund. 253; S. C., *Harrison v. Evans*, 3 Bro. P. C. 465; *Ballard v. Bennett*, 2 Burr. 777; F. N. B. 23 e.

(z) 2 Leon. 107. The court of St. Martin's le Grand cannot be correctly termed one of the city courts, being nothing more than a commission of errors under the great seal, directed to certain delegates, (usually the judges of the superior courts at Westminster,) empowering them to examine the record in which

As one consequence of this controlling power of the hustings over the sheriffs, it has cognizance of the action of replevin (a). The owner of the goods enters a plaint before the sheriffs with the clerk of the papers at one of the compters, and executes the ordinary replevin bond to the sheriffs to return the goods or value in case of failing to prove title to them; and as the validity of the distress cannot be tried by the sheriffs, the record of the proceedings is thereupon certified into the hustings by the clerk of the papers, by virtue of a process called a *levetur querela*; and if issue be joined to try the property in the goods, a jury is summoned to try it from the six adjacent wards; and if the goods are removed out of the sheriffs' reach, a writ of *withernam* may issue, as in ordi-

errors are suggested, and correct the same. The form of the commission, and the mode of proceeding, are given in Fitzherbert's *Natura Brevium*, fol. 22, tit. Error in London; and in *Green v. Cole*, 2 Saund. 253. Previously to the charter of Henry VIII., this commission sat at the church of St. Martin's le Grand, a liberty belonging to the dean and chapter of Westminster, having formerly a court of record distinct from the City of London; and in compliance with ancient custom, and by force of the charter of 1 Edw. III., requiring "all inquests concerning the men of the city to be taken by the king's ministers and justices at St. Martin's le Grand," the commission of errors was, till the reign of Henry VIII., always expressly directed to sit there. Since that king's charter, the commissioners have sat at Guildhall. The commission is obtained by means of a petition to the Lord Chancellor, on behalf of the party who desires to have the judgment of the inferior

court reviewed. The commissioners upon their appointment issue a precept to the lord mayor and sheriffs, commanding them to cause the record of the judgment to be brought before them. After this, an interval of forty days is, by ancient custom, allowed to the mayor and sheriffs, "to be advised of their records," upon the expiration of which, the record of the judgment is certified by the recorder, *ore tenus* (see *ante*, p. 13); and the errors, being then assigned, are examined by the commissioners, and the judgment reversed or affirmed as occasion requires.

The proceedings upon this commission being extremely expensive, it has been rarely resorted to in modern times, and then only where important civic rights had become the subject of adjudication. See *Chamberlain of London v. Evans*, 6 Bro. P. C. 181; 2 Rep. M. C. p. 134.

(a) See *King v. Serjeant*, Ca. Temp. Will. III. p. 320.

nary cases, to make reprisals on other goods of the distrainor (*b*).

The hustings is the proper tribunal for pronouncing judgment of outlawry in London, and being held so often, is preferred to any ordinary county court; when, therefore, it is intended to proceed to this extremity in an action, the venue is purposely laid in London (*c*). The judgment is not, as is usually the case, given by the coroner, but by the recorder (*d*).

The ancient proceeding of attain to reverse a verdict given in any of the other courts, might also be taken in the hustings (*e*); but this proceeding is now universally abolished (*f*).

To this court also, as formerly to all county courts (*g*), properly belongs the enrolment of deeds, wills, &c.—a jurisdiction most probably derived from that ancient system to which we have before alluded (*h*), as having existed amongst our northern ancestors, who, ignorant of letters, required every legal act and form to be pronounced in public: and, consequently, such solemn matters as the conveyance of land, or the publication of a will, to be declared in the presence of the assembly in the county court; and when written records came to be substituted for oral traditions, it became customary to enter a minute of the circumstance on the rolls of the court (*i*). It is laid down, therefore, that, by ancient custom, lands in

(*b*) *Emerson's City Courts*, *ubi sup.*, and p. 21; Priv. Lond. 236, *et seq.* There are various peculiar customs relating to the law of distress in London. A reversion, or a rent devised by will, enrolled in the hustings, passes immediately on the death of the testator, so as to enable the devisees to distrain without attornment from the tenant; and a devise of a rent in gross may be distrained for, without any clause of distress in the will. Ancient Customs of London, p. 4; Priv. Lond. p. 73.

(*c*) See *Morris v. Davis*, 4 Dowl. 317; 1 H. & W. 513, S. C.

(*d*) *Anse*, p. 118; 4 Inst. 247.

(*e*) 11 Hen. VII. c. 21; Priv. Lond. 243.

(*f*) 6 Geo. IV. c. 50, s. 60.

(*g*) *Vid.* Dugd. Orig. Jur. ch. 3, tit. County Court.

(*h*) *Anse*, p. 9.

(*i*) Hick's Diss. 29. See a conveyance recorded in the hustings of London, in the time of Henry I., in the book of the Abbey of Ramsey, quoted by Lord Coke, 4 Inst. 248.

London might pass by mere parol(*k*); for as the transaction was recorded in the hustings, no other voucher was necessary: and on the passing of the statute 27 Hen. VIII. c. 16, requiring all bargains and sales of land under the statute of uses to be enrolled, it was decided, that in London the enrolment might be made in the court of hustings(*l*); and various recent local statutes have from time to time expressly directed conveyances of property in London, conveyed thereunder, to be so enrolled(*m*).

It is laid down that all wills of land in London(*n*), and even of personal property of citizens(*o*), ought still to be enrolled in this court, and proved by citizens; and if the will relate to personal property, it should be proved first before the ordinary, and then enrolled in the hustings(*p*); and without such enrolment within a convenient time, the devise of the land is said to be void(*q*).

The advantages of a proper system of registration of the conveyance and disposition of property, are becoming every day more and more apparent to the commercial world. The system of enrolment in force in London was in consonance with the prevailing principle of the Saxon policy, to secure notoriety in every transaction which might in any way affect third persons, and thus was the public insured against fraud, the real owner of property made known to the world, and no man enabled to support a false credit for what he did not really possess. The court of hustings offers to the City of London an opportunity of re-establishing a system, which, in a commercial city like this, is absolutely necessary for public security.

(*k*) 2 Inst. 675.

(*l*) *Chilburn's case*, Dyer, 229, pl. 50.

(*m*) See 33 Geo. II. c. 30, s. 10; and Coal Act, 1 & 2 Will. IV. c. LXXVI. s. 10; the Farringdon New Street Act, 1 & 2 Vict. c. LXXXIII.;

the Royal Exchange Act, 1 & 2 Vict. c. C., &c.

(*n*) Dalton, 117.

(*o*) Hob. 346.

(*p*) Cro. Car. 396; Register, 246; Park, s. 577.

(*q*) Cro. Car. 669.

By the present practice of the court, the will or deed may be enrolled at the suit of any party beneficially interested (r).

The will to be enrolled may be brought before the mayor and aldermen in full hustings, and proclaimed by the serjeant-at-mace, and proved by three witnesses sworn and examined as to the circumstances of the execution and of the capacity of the testator; and if the evidence be satisfactory, the will may be entered upon record by the clerk of the enrolments (s).

The Lord Mayor's Court.

The lord mayor's court, or court of aldermen of the outer chamber, is a court of record of law and equity; and at present is practically the most considerable court of justice connected with the corporation of London, with respect both to amount and importance of business (t). It is generally considered of more recent origin than the hustings (u); but its system of judicature seems to be derived in a great degree even from a more ancient source. In legal style it is called, "The Court of our Lady the Queen, holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London." In legal consideration and in conformity with the style of the court, the lord mayor and aldermen are supposed to preside (x): but the recorder is in fact the sole acting judge; and no instance is recorded of the

(r) Boh. Priv. Lond. 74.

(s) *Id.* 74, 211, *i. e.* the second attorney of the mayor's court, who is the clerk of the hustings, and in that character has to attend the courts wherever held, to enroll proclamations of deeds, keep a journal of the proceedings, and make out a list of the days of holding the courts, and the *dies non*. 2 Rep.

M. C. p. 91.

(t) 2 Rep. M. C. p. 123.

(u) See 4 Inst. 248.

(x) And the ancient officers of the mayor, the serjeants-at-mace, whom we have noticed before, (*vid. ante*, p. 17,) act in every respect as the executive officers of the court. Emerson's City Courts, p. 35.

mayor or aldermen sitting there judicially (y). During the illness or necessary absence of the recorder, a deputy judge may be appointed by the court of aldermen; and by ancient entries in the corporation books it appears, that in such a case the town clerk, if a barrister, may preside by virtue of his office, and without any express appointment. No instance has, however, occurred in modern times in which the town clerk has acted in this capacity (z).

All persons, as well freemen as non-freemen, not being under any general legal incapacity which would disable them from suing in the superior courts at Westminster, may also sue in this court (a).

As a court of common law it has cognizance of all personal and mixed actions, including the action of ejectment arising within the city and liberties, without any limitation as to the amount of the debt or damages sought to be recovered (b); and if the gist of the action arose within the city, neither residence of the plaintiff or defendant is necessary. Therefore, where H. in America ordered goods from a shop in Newgate Street, to be put on board a ship out of the limits of the city, the action was declared to be well brought in this court (c).

This court has also a peculiar jurisdiction in cases arising upon customs of London, whether relating to the form of proceeding or the nature of the subject matter. Thus it is laid down that an action of debt on a *concessit*

(y) There is one inconvenience arising from this, which might be easily remedied by an act of common council. The recorder is supposed to have no authority to make orders except when sitting in court; and consequently, particulars of demand, or other interlocutory arrangements, which in the superior courts are effected by judges' orders or side-bar rules, are always obliged

to be obtained in open court; see 2 Rep. M. C. p. 124.

(z) *Id. ib.*

(a) *Id. ib.*

(b) *Id. ib.*, and Emerson's City Courts, p. 48.

(c) *Husham v. Smith*, 2 Campb. 21; and see also *Rees v. Smith*, 2 Stark. 33; *Dutens v. Robson*, 1 H. Bl. 100; *Carstake v. Mapledorum*, 2 T. R. 473.

solvere may be maintained here for money due on *simple contract* without specialty (*d*); and this, whether against the original debtor or his executor or administrator (*e*); and so an action of covenant lies by the custom of London without specialty (*f*): but it does not appear what advantage is to be derived from such a mode of proceeding, over the ordinary forms at present adopted in the superior courts. There are, however, other customary proceedings in this court which offer peculiar advantages to the suitor.

By the custom of London as laid down in the *liber albus* in the town clerk's office (*g*), "where a *fême*, covert of a husband, useth any craft in the said city on her sole account, whereof the husband meddleth nothing, such a woman shall be charged as a *fême* sole concerning every thing that toucheth the craft; and if the husband and wife be impleaded, in such a case the wife shall plead as a *fême* sole; and if she is condemned, she shall be committed to prison till she has made satisfaction; and the husband and his goods shall not, in such case, be charged or impeached" (*h*). In such actions the husband is only named for conformity, and if judgment be given against them, the execution will only go against the wife or her goods (*i*). This mode of proceeding can only be adopted in the city courts, and cannot be removed out of them (*k*).

(*d*) 8 Co. 126; 1 Hen. VII. 22, &c.; F. N. B. 161 b.; *Snelling v. Norton*, Cro. Eliz. 409.

(*e*) *Id. ib.*; Priv. Lond. 77, 81, 146; 5 Co. 826.

(*f*) *Id. ib.*; 27 Hen. VI.; Covenant, 11 F. N. B. 145; 22 Ed. IV. 2; *Shep. Touch.* 162.

(*g*) Mr. Justice Aston mentions a similar custom in the manor of Horwell, which was held valid in C. B. in his time, 3 Burr. 1785.

(*h*) So laid down in *Lavie v. Phillips*, 3 Burr. 1776; and in 3 Co. 1; *Langham v. Bewett*, Cro.

Car. 68; Litt. Rep. 31; Hetly, 9, S. C.; and see Priv. Lond. 187; Bro. Customs, pl. 43; 1 Edw. IV. 6; 35 Hen. VI. 38; 1 Leon. 131; 2 Brownl. 218; S. P., 1 Leon. 131; 10 Mod. 6.

(*i*) *Id. ib.* The husband ought always to be made a formal party. *Beard v. Webb*, 2 Bos. & P. 93; *Caudle v. Shaw*, 4 T. R. 361; 2 Wils. 3; unless the husband be banished the realm, *Dyer*, 271 b.

(*k*) Priv. Lond. 188; *Pope v. Vaux et Us.*, 2 W. Bl. 1060; *Moreton v. Packman*, 2 Keb. 583; *Stanton's case*, Moor, 135, 136; Cro.

So it is a custom of London for one obligor or co-surety who pays the whole debt to have an action against his co-obligor or co-surety for contribution (*l*).

Another mode of proceeding peculiar to this court is the ancient writ *de rationabili parte bonorum*, on behalf of the widow or children against the administrator of an intestate freeman, to compel payment of their reasonable shares of the deceased's effects (*m*), directing the administrator, after payment of the debts and allowing what is called the widow's chamber (*n*), viz. her wearing apparel and the furniture of her chamber, to distribute the deceased's property according to the custom of London; that is to say, if there are both wife and children, the former takes a third, the latter a third, and the remainder goes to the administrator (*o*); and if there be a wife and no children, or *e converso*, the property is divided into two parts only, one going to the administrator and the other to the widow or children, as the case may be.

This reasonable division of a deceased person's property

Eliz. 409; *Roysten v. Ivery*, 3 Keb. 302; *Beard v. Webb*, 2 B. & P. 93; *Caudell v. Shaw*, 4 T. R. 361, 362; *Langham v. Bewett*, Cro. Car. 68; *Clayton v. Adams*, 6 T. R. 605. For other points relating to this custom, see *post*, Qualifications of Traders.

(*l*) *Priv. Lond.* 79, 84. See *Leyer v. Nelson*, 1 Vern. 456.

(*m*) *F. N. B.* 122.

(*n*) See *post*, p. 182.

(*o*) To be redistributed under the statute of distributions, 1 Jac. II. c. 17, s. 8. The next of kin take therefore in two ways, viz. under the statute, and under the custom; and the widow is the greatest gainer thereby; as, in addition to her moiety or third as the case may be, under the custom, she takes the same proportion out of the adminis-

trator's or dead man's share under the statute. If, therefore, there be no children, instead of a half, she will be entitled to three fourths,—one half by the custom, and the remainder by the statute. So if there be children, she is entitled to her third by the custom, and a third of the administrator's share by the statute, or four ninths of the whole property, instead of three ninths; and if the children should all die in the father's lifetime, although leaving issue, the latter will take nothing by the custom, but be entitled only to their two thirds of the administrator's half, or one third of the whole property, leaving the residue to the widow. See *Fowke v. Hunt*, 1 Vern. 37; *Finner v. Longland*, 2 Eq. Ca. Ab. 264, pl. 5; *Toller*, 390, 391.

which formerly prevailed, whether a will was made or not, is positively alleged to have been at one time a part of the common law of England (*p*), and altered by imperceptible degrees without any express statutory provision (*q*). However, it was at a very early period necessary to allege the existence of a local custom of succession in order to take advantage of the writ; and the custom seems only to have remained in force in Wales, York, and London, and even there is now taken away when the deceased has bequeathed his property by will (*r*); but still exists in cases of intestacy, or where a freeman of London, by express agreement in writing or by will, provides that his personal property shall go according to the custom of the city (*s*).

The fashion of resorting to the Court of Chancery on every occasion of dispute relative to the distribution of a testator or intestate's estate, has thrown into disuse this more ancient and expeditious remedy; but there can be no doubt that it is still in full force (*t*).

The customary mode of distribution is always judi-

(*p*) Glanv. lib. 12, c. 20; and Mirror, ch. 5, s. 2.

(*q*) 2 Bl. Com. 492, 493; and Lord Mansfield's observations in *Kemps v. Kelsey*, Prec. Ch. 596.

(*r*) 4 & 5 Will. & M. c. 2, and 23 Ann. c. 5, for York; 7 & 8 Will. III. c. 38, for Wales; and 11 Geo. I. c. 18, for London. It was for some time doubted whether the custom of London did not apply to the residuary estate of a testator, who had appointed executors of his will, but made no disposition of the residue; but it is now an established rule, that where an executor is appointed, the custom does not apply, *Wilkinson v. Alkinson*, 1 Turn. Ch. Ca. 255; *Fitzgerald v. Field*, 1 Russ. 416. It seems, how-

ever, that if no executor be appointed, so as in the legal sense to amount to an intestacy, the residuary estate is subject to the custom. *Wheeler v. Sheer*, Moseley, 303; *Wilkinson v. Alkinson*, *sup.*; Williams on Exors. pt. 3, lib. 4, ch. 2.

(*s*) 11 Geo. I. c. 18, s. 18. Where a man for a valuable consideration contracted to become a freeman of London, but died before he had taken up his freedom, it was holden by Lord Macclesfield, that the personal estate should be divided as if he had been a freeman, but that the children should not be city orphans. *Frederick v. Frederick*, 1 P. Wms. 710, affirmed in House of Lords, 1 Bro. P. C. 253.

(*t*) See *post*, p. 186.

cially noticed by the superior courts, and there are numerous decisions in the books upon the subject. The custom prevails, whether the intestate were a resident citizen, or a mere honorary freeman, as in the case of Sir Francis Onslow, presented with the freedom of the city on the occasion of Lord Rodney's victory (*u*); and the custom follows the person of the freeman (*x*) so as to avail after his quitting London and residing in York or elsewhere, where a different custom prevails; for the custom of London will control that of York (*y*).

With respect to the widow's chamber, it is said, that if the estate exceed the value of £2,000, the widow will be entitled to £50 in lieu of it (*z*); but it is not, of course, payable if the estate be insufficient to pay debts (*a*); but, in analogy to the rule in equity as to the wife's *paraphernalia*, it seems that she would be entitled to stand in the place of specialty creditors, in order to be reimbursed the value out of the intestate's freehold estates: and so in case of a partial intestacy, if the articles falling within the widow's chamber are not specifically bequeathed, it appears, that although they would be liable to debts in failure of the other personal estate, yet that they would not be liable to the demands of general legatees (*b*).

The wife will be barred of the customary share, by accepting a settlement of personal estate to take effect after her husband's death, in case of surviving him, although nothing appear to that effect in the settlement, and even (*c*) though the settled property were part of her own fortune (*d*). And if a wife be divorced *a mensâ et thoro* for

(*u*) *Onslow v. Onslow*, 1 Sim. 18.

(*x*) 1 Vern. 80. See also *Webb v. Webb*, 2 Vern. 110.

(*y*) *Cholmeley v. Cholmeley*, 2 Vern. 48, 82.

(*z*) *Biddle v. Biddle*, 7 Vin. Abr. 201, tit. Customs of London, (B. 2) pl. 2; 4 Burn's E. L. 442, 8th edit.

(*a*) Swinb. p. 6, s. 7, pl. 5.

(*b*) 3 Atk. 369; 2 Roper's Husb.

and Wife, ch. 13, s. 2, p. 14, 2nd edit.

(*c*) *Lewin v. Lewin*, 3 P. Wms. 16; Lib. de Antiq. Leg. 30 Hen. III. anno 1246.

(*d*) *Whithill v. Philips*, Prec. Ch. 327. The right of the widow to her customary share can, however, of course, be expressly saved by the terms of the instrument, *Kirkman*

adultery, she forfeits her right to her moiety and widow's chamber under the custom (e).

The children of a freeman, however numerous, and whether born in or out of the city (f), or of different wives (g), and including a posthumous child (h), represent a class, and, under the custom of London, are entitled to have the orphanage part divided equally between them, to the exclusion, as we have seen (i), of grandchildren, who are entitled only to their parents' portion of the dead man's share distributable under the statute (k).

A child may, however, be deprived of his customary

v. *Kirkman*, 2 Bro. C. C. 95; as by stating the provision to be in lieu of dower and thirds at common law, out of the realty, and not mentioning the custom, *Onslow v. Onslow*, 1 Sim. 18. A settlement of land, however, or money to be laid out in land, is no bar, *Babington v. Greenwood*, 1 P. Wms. 530; Prec. Ch. 505; *Attorney-General v. Waterson*, 1 Eq. Ca. Abr. 157, pl. 5; Gilb. Eq. Rep. 94, unless so expressed in the deed, 1 P. Wms. 531; and if the wife even covenant to give up her right to dower and the custom in consideration of a jointure, that provision upon the husband's intestacy is no bar to her title to a share of the dead man's part under the statute of distributions, Rop. Husb. and Wife, vol. 2, ch. 13, s. 2, p. 14; but if it appear from the instrument, though not expressly declared, that the settlement made on the wife was intended to be accepted in lieu of the provision given her by law in the event of surviving her husband, it will be sufficient to exclude her from her whole distributive share by the custom and under the statute, as well as from dower, *Walker v. Walker*,

1 Ven. Sen. 54; *Eastshore v. Challe*, 10 Ves. 1. When the provision is made after marriage, it is at the widow's option, on her husband's death, to accept it, or her share under the custom and statute, which must be first ascertained, in order to enable her to decide. 1 Roper's Husb. and Wife, 600; *id.* vol. 2, p. 22.

(e) *Pettifer v. James*, Bunb. 16; 4 Burn's E. L. 445, 8th edit.

(f) 4 Burn's E. L. 444, 8th edit.

(g) *Hedges v. Hedges*, 2 Bro. P. C. 457.

(h) *Walsam v. Skinner*, Prec. Ch. 499; S. C. Gilb. Eq. Rep. 153.

(i) *Anse*, p. 180, note (o). *Northey v. Burbage*, Prec. Ch. 470; *Foweke v. Hunt*, 1 Vern. 397; Salk. 429; 2 Vern. 612; 1 P. Wms. 341.

(k) *Williams on Exors.* pt. 3, lib. 4, ch. 2, s. 2; but it seems that on attaining twenty-one, or, if a female, attaining that age or marriage, the customary share becomes vested in a freeman's child, and would therefore be distributable under the statute of distributions amongst their descendants. See *Jesson v. Essington*, Prec. Ch. 207; *Wilcocks v. Wilcocks*, 2 Vern. 559.

share, either by advancement during his father's life, or by other means which will be presently noticed. An advancement by the father to the full amount of a child's distributive share, under the custom, amounts to a full satisfaction thereof (*k*), and the other children are then entitled to the orphanage part between them; and if all the children or an only child be fully advanced, the orphanage part under the custom is considered satisfied (*l*); but as long as there is a single child unadvanced, or not fully advanced, the orphanage part will remain (*m*), and, if all the other children have been fully advanced, will go to the child remaining unadvanced, or brought into hotchpot, as it is called, with those who have been partially advanced (*n*).

By the custom of London, even a partial advancement on marriage is a full satisfaction of the orphanage part, unless expressed to the contrary by the father's own hand-writing (*o*).

(*k*) *Cleaver v. Spurling*, 2 P. Wms. 527.

(*l*) *Id. ib.*; *Clare v. Acmooty*, cited in *Hagcock v. Hancock*, 2 Vern. 665; *Judson v. Ramsden*, *id.* 273; and in such case the widow, if there be any, takes her moiety, and the other half is divided, under the statute of distributions, between her and the children, *id. ib.*; *Hearne v. Baker*, 3 Atk. 214; *Wood v. Briant*, 2 Atk. 523; but if there be no widow, the whole residue will go to the children under the statute, *Godwin v. Ramsden*, 1 Vern. 200.

(*m*) *Folkes v. Western*, 9 Ves. 460; 2 Salk. 426; *Fene v. Benco*, 2 Vern. 234; *Dean v. Lord Delaware*, 2 Vern. 628; *Stanton v. Platt*, *id.* 754; *Garon v. Tippet*, Amb. 189.

(*n*) *Beckford v. Beckford*, 1 Vern. 345; *S. C.* 2 Vern. 281; *Cleaver v. Spurling*, 2 P. Wms. 527. An ad-

vancement to deprive a child of his portion under the custom must arise exclusively from personal property, *Cox v. Belitha*, 2 P. Wms. 274; and although the father settles real estate, or money directed to be so invested, expressly to deprive the child of his customary share, yet it will not have that effect, *Rich v. Rich*, 2 Ch. Ca. 160; *Civil v. Rich*, 1 Vern. 216; *Annaud v. Honeywood*, 1 Vern. 345; but terms of years, or chattel interests, being looked upon as personal property, are a good advancement and satisfaction of the orphanage part, *Cox v. Belitha*, *ubi sup.*

(*o*) A full advancement, however, need not be made on marriage, or in pursuance of a marriage agreement, but any other establishment of the child in life will do. The decisions under the statute of distributions are equally applicable to this subject;

An act of common council, commonly called Jud's law (*p*), deprives of their orphanage portions any freeman's child, convicted in the mayor's court, or elsewhere, of maliciously going about, or attempting to do or cause to be done any bodily harm, death, or destruction, to his or their father or mother, or marrying or contracting marriage in their parents' lifetime without their consent, under the age of 21 if a son, and 18 if a daughter; and any son being convicted of theft or felony, or being a common whoremaster, common *dicer*, or common player of unlawful games notoriously known, and any daughter guilty of whoredom, or being a common picker; but this does not, of course, prevent the father bequeathing the share to the child by will.

The above law, as a part of the *lex loci*, must be judicially noticed by the mayor's court; and in cases of intestacy, gives to the court a very salutary power of depriving an unworthy child of what the father, if living, might be presumed to have intended for others.

see Williams on Exors. vol. 2, p. 921: and it is now held, that, besides a mere marriage portion, whatever is actually advanced to establish the child in the world, and not merely for maintenance or education, is an advancement within the custom, *Edwards v. Freeman*, 2 P. Wms. 440, 441; *Phiney v. Phiney*, 2 Vern. 638; as the grant of an annuity, Swinb. pt. 3, s. 18, pl. 29; setting up in business, *Gilbert v. Wetherell*, 2 Sim. & Stu. 254; paying a heavy apprenticeship premium, 2 Rop. Husb. and Wife, 12; *Morris v. Burroughs*, 1 Salk. 403; purchasing a presentation to a living, *Hender v. Rose*, 3 P. Wms. 317, (*note*); or a public office, *Norton v. Norton*, 3 P. Wms. 317; or a commission in the army, *Kirkudbright v. Kirkudbright*, 8 Ves. 63; or

money settled on a contingency, as majority, Toller, 378; *Edwards v. Freeman*, *ubi sup.*: such an interest, however, if still in contingency, would be valued accordingly; but if already payable at the father's death, amounts to advancement *pro tanto*, *id. ib.*; Williams on Exors. vol. 2, p. 921. Some years after the marriage of a freeman's son, the parents on both sides met and agreed to advance £200 apiece, to purchase a commission for him; and this, appearing to be intended as a marriage portion, was held a sufficient advancement. *Hearne v. Barber*, 3 Atk. 213; and *vide Fawkner v. Watts*, 1 Atk. 406.

(*p*) Passed 12 October, 5 Edw. VI.; set forth in 2 Stow, lib. 5, ch. 23, at length; and 3 Atk. 213; 1 Atk. 406, note (1).

It has been thought necessary thus far to notice the London custom of distribution in this place, as, before the present system of equitable jurisdiction in the Court of Chancery was called into existence, the custom could only be enforced in this court; and as the process by original writ is now abolished (*q*) in the superior courts, the common law remedy is still available here only. It will be necessary, however, in treating of the court of orphans on the equity side of this court, to advert to the subject again; and to point out the further advantages of proceeding in the lord mayor's court in such cases.

There being particular offences by the custom of London, visited with corporal punishment, differing from the general law of the land, actions will lie in the city courts for slanderously accusing a party of such offences. Thus we have seen (*r*), that whores in London are liable to be carted; and in consequence of that law, an action lies here for calling a woman a whore, or any word tantamount to it, as strumpet, &c., or calling the husband a cuckold (*s*), or saying of the plaintiff, an unmarried woman, that she had a child, or in fact any words imputing want of chastity to her (*t*); and this action cannot be brought out of the city courts, and a prohibition lies to the ecclesiastical court for entertaining any proceedings thereon (*u*).

A considerable part of the business of the lord mayor's court consists of actions brought by common informers, or ordered by the court of aldermen upon the presentments of the wardmote's inquests, for pecuniary penalties imposed by custom, or acts of common council, upon non-freemen trading by retail within the city, or upon freemen employing non-freemen, or upon persons infringing the city laws for the regulation of porters,

(*q*) 2 Will. IV. c. 39, s. 21.

(*r*) *Ante*, p. 151, note (*h*).

(*s*) Dougl. 380; 4 Burr. 2032.

(*t*) *Vicars v. Worth*, Stra. 471;
Hodgkins v. Corbet, id. 545; *Cook*

v. Wingfield, id. 555; 8 Mod. 114;

Watson v. Clarke, Comb. 42, 139;
Carth. 75.

(*u*) *Id. ib.*

carmen, and other fellowships or societies. The acts of common council which impose these penalties, usually direct them to be sued for in the lord mayor's court, in the name of the chamberlain of London. By far the most numerous are those instituted for the purpose of compelling retail traders to take up their freedom (*x*).

All actions are supposed to be commenced by an original bill or plaint (*y*), which, however, is never in practice recorded until a subsequent stage; the actual commencement of the suit being by an entry made in a court book of the names of the parties, and a concise statement of the cause of action (*z*). A note of this entry is served on the defendant, with a notice to appear; and upon the appearance of the defendant, the action proceeds in the usual way; the pleadings, however, being in the first instance entered on the roll, which is handed over from one attorney to the other for that purpose (*a*).

If the defendant do not appear, or is not to be found within the jurisdiction of the court, a peculiar remedy is open to the plaintiff, called foreign attachment, which enables the plaintiff to instantly attach any property or debts owing to the defendant from any person within the jurisdiction—a mode of proceeding which is at this day repeatedly had resort to in case of the insolvency or supposed insolvency of the defendant, in order to secure a priority over other creditors.

This proceeding is doubtless of great antiquity. Under the Roman system of jurisprudence, if a defendant kept out of the way to elude a prosecution, he was summoned three times, with an interval of ten days between each summons, by the voice of a herald, or by letters, or by the edict of the prætor; and if he still did not appear, the prosecutor was put in possession of his effects, and

(*x*) 2 Rep. M. C. p. 128.

(*y*) See *ante*, p. 186.

(*z*) See the practice laid down

on a foreign attachment, *post*,
p. 189.

(*a*) Emerson's City Courts, p. 54.

they could not be released until the defendant found security (*b*): and this mode of proceeding, which seems to have prevailed at a very early period in London, as in other Roman provinces, was always considered extremely important to the citizens as a commercial people, who, having given credit to a trader, might be debarred of their remedy by his going out of the jurisdiction of their courts, though at the same time he might have left ample effects behind him in the hands of third parties. It was, therefore, confirmed to the citizens by Henry I.'s charter (*c*), that debtors should pay their debts, or discharge themselves therefrom in London, and in default of payment or appearance, the citizens of London, to whom the debts were due, might seize the debtor's goods in London (*d*).

This customary mode of proceeding still exists in other ancient cities and towns in England, as Bristol (*e*), Exeter (*f*), Lancaster, as well as in Scotland (*g*), and Jersey (*h*), and in most maritime towns on the continent of Europe. In France it is called *saisie arrêt* (*i*), and in Scotland it is termed arrestment.

The custom of foreign attachment in London was certified into court in an old case (*k*) to be, "that if a plaint be affirmed in London before, &c., against any person, and it be returned *nihil*, if the plaintiff will surmise that

(*b*) Cic. Quint. 19.

(*c*) Confirmed by charter of Hen. II.; 4th charter of Hen. III.

(*d*) Norton's Com. 380. A similar practice prevailed in the Bloomsbury Court. Frem. Rep. 321, pl. 400, *Watson v. Parsons*.

(*e*) See *Bruce v. Wait and another*, 3 M. & W. 21.

(*f*) 1 Leon. 189, 264; Cro. Eliz. 172, pl. 3.

(*g*) Erskine's Principles of the

Law of Scotland, tit. Arrestment; *Selkirk v. Davies*, 2 Dow. 247.

(*h*) *Ex parte Dobree*, 8 Ves. 82.

(*i*) Pothier Traité de la Procéd. Civ. art. Saisie Arrêt; Code Civ. liv. 5, tit. 7.

(*k*) *Per* Starkey, Recorder, 22 Edw. IV. 306, pl. 11; Roll. Abr. 554; and also in *Robertson v. Norroy*, Dyer, 83 a; Coke's Entries, 139.

another person (*l*) within the city (*m*) is a debtor to the defendant in any sum (*n*), he shall have *garnishment* (*o*) against him to warn him to come in and answer whether he be indebted in the manner alleged by the other: and if he comes and does not deny the debt, it shall be attached in his hands; and after four defaults recorded on the part of the defendant, such person shall find new surety to the plaintiff for the said debt; and judgment shall be that the plaintiff shall have judgment against him, and that he shall be quit against the other after execution sued out by the plaintiff."

As the original object of this process was to compel the defendant's appearance and to give bail to the action (*p*), the attachment is at an end immediately that is done (*q*). In practice (*r*), however, the real defendant is not actually served with any process or notice at all, but as a necessary foundation for the attachment, the plaintiff makes an affidavit (*s*) of his debt; the names of the parties with a memorandum of the attachment are then entered

(*l*) Property in the plaintiff's own hands cannot, therefore, be attached, *Hope v. Holman*, 1 Brownlow & Goldesbor. 60; nor if it be in the hands of the plaintiff and his partner, *Novell v. Hullett*, 4 Barn. & Ald. 646.

(*m*) This is also a necessary circumstance, 1 Roll. Abr. 554; Lutw. 984; and in a plea of foreign attachment this fact must be alleged, *Tamen v. Williams*, 2 Chitty's Rep. 438; 3 Dougl. 281; but it is immaterial when the debt attached is contracted, Carth. 25; Vent. 236.

(*n*) Or has goods of the defendant in his possession. See *post*, note (*l*), p. 190.

(*o*) From *garnisr*, Fr. to warn. Cowell's Interp.

(*p*) Roll. Abr. 551; Cro. Eliz. 713; 1 Leon. 52; 1 Roll. Rep. 106.

(*q*) *Andrews v. Clarke*, Carth. 26. See also *Wood v. Thomson*, 1 Marsh. 395; S. C. 5 Taunt. 851; but this bail is not in the nature of ordinary bail on arrest on meane process, and, therefore, it would appear, is still essentially necessary to discharge the attachment. See *Bromley v. Peck*, 5 Taunt., *ubi sup*.

(*r*) See the practice laid down in *Magrath v. Hardy*, 6 Scott, 630; 6 Dowl. P. C. 749; 4 Bingh. N. C. 782; and see 4 B. & Ald. 649.

(*s*) The affidavit must be made personally by the plaintiff, and not by the attorney. Roll. Abr. 554; Cro. Eliz. 713; Jones, 406; 2 Lutw. 985. It is not necessary to aver this fact in pleading foreign attachment; it is sufficient to say the party was "warned to show cause." *Bankes v. Self*, 5 Taunt. 234.

in a book, called the action book, preserved in the office of the court, and an attachment paper is prepared by the plaintiff's attorney, and notice thereof served upon the person in possession of the property, who is thenceforward denominated the garnishee or person warned. The notice is, that all the goods, monies, and effects of the defendant then in the garnishee's possession, or which may thereafter come to his possession, or the debt or debts due from him to the defendant (*t*), are attached to answer the plaintiff's demand; and that he (the garnishee) is not to part with such goods, or pay over such debts, without license of the court. No precept or process is even issued against the defendant, nor any actual default made, nor are there any returns of *nihil* or defaults or otherwise actually made to any process, although

(*t*) Any kind of goods or money belonging to the defendant may be attached, whether looked up in boxes or not, (for the court may order them to be opened,) Priv. Lond. 266; or in the hands of an executor, 1 Roll. 554, l. 20, or an attorney, 1 Sand. 67, 68; 1 Sid. 362: so besides debts actually due to the defendant from the garnishee, 1 Rol. 551; Carth. 26, money not due may be attached, to be paid over on becoming due, 3 Leon. 236; Cro. Eliz. 184, 713; 1 Sid. 327; 1 Rol. 105; or part of a debt, 1 Godb. 106; before forfeiture of a bond, the attachment is against the debt owing, Ld. Raym. 636; afterwards for the penalty, *ib.*; but the court gives judgment only for the principal and interest, Cro. Eliz. 101; Sid. 327. So the attachment extends, according to the notice, to property or debts afterwards accruing, due to the defendant before appearance, 1 Roll. 553, l. 25; 3 East, 367; but not to a sum due for a legacy, 3 Bulstr. 244; Noy. 115; Roll. Abr. 551;

nor for rent, Priv. Lond. 267, or property in the custody of the law under a distress, *id. ib.*; 1 Rol. 551, l. 37, nor money levied in execution under a *fi. fa.*, 1 Leo. 30, 264, nor a debt due upon a statute or recognizance, *id. ib.*, or on a judgment, Cro. Eliz. 63; Dy. 247; 1 Rol. 952, or upon an award, 1 Vent. 112, 113; 1 Lev. 306, or on a master's *allocatur* on a rule of court or otherwise, *Coppell v. Smith*, 4 T. R. 312, nor the proceeds of an execution in an executor's hands, 1 Vent. 112, nor where the garnishee has a lien upon them without discharging his lien, *Nathan v. Giles*, 5 Taunt. 558; 1 Marsh. 226, nor a debt assigned by the defendant for valuable consideration, *Lewis v. Wallis*, Priv. Lond. 277, nor after action brought in the superior courts against the garnishee for the goods or debts sought to be attached, Cro. Eliz. 101, 157, 593, 691; 3 Leon. 210, 232; Roll. Abr. 552, nor after a suit in equity commenced therefor, 2 Ch. Ca. 233.

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there are entries thereof on the record, and the omission of such entries would be fatal(u). The serjeant-at-mace serves the attachment on the garnishee, and makes an entry thereof in the action book; and thenceforward the proceedings are against the garnishee, who either appears and disputes the attachment, or suffers the property to be taken by default. The record is made up before the garnishee pleads, and contains either an entry of his appearance or his default. If the former, it is handed to the garnishee's attorney to plead to. He cannot dispute the validity of the plaintiff's (x) demand against the defendant, but only his own liability to the attachment, as by a denial of any debt owing from himself, or of the defendant's title to the property attached, or by setting up a lien (y). Upon this a record is made up, stating the prayer of process, the summons of the defendant, and the returns of *nihil* and *non est inventus*, and the defendant's default of appearance. The validity of the attachment is then tried by a jury before the recorder, the registrar marks the verdict, and the successful party is entitled to sign judgment on the day following that of the trial. If the plaintiff succeed, he must find two substantial sureties to restore the property attached in case the real defendant should appear within a year and a day and disprove the debt. If the subject of the attachment be money or a liquidated debt, execution may then issue immediately against the garnishee; but if the property consist of goods, a precept issues to one of the serjeants-at-mace, to cause an appraisement to be made by two freemen, sworn for that purpose; which appraisement, with an inventory of the goods annexed, is afterwards returned into court: or if the garnishee has removed the goods, a return is made of that fact, and a jury is impanelled to assess their value. Final judgment is then signed against the garnishee, which is, in all cases,

(u) *Fisher v. Lane*, 3 Wils. 297;
S. C. 2 W. Bl. 834; *Bruce v.*
Wait, 1 Man. & G. 1 (a); *vid. ante*,
p. 17.

(x) Cro. Eliz. 172, pl. 13; *M' Daniel v. Hughes*, 3 East, 367.

(y) *Giles v. Nathan*, 5 Taunt.
558; S. C. 1 Marsh, 226.

that he shall be acquitted against the defendant, for so much as the plaintiff has recovered against him, but no costs are awarded on either side (*z*). The defendant may, however, at any time come in and dissolve the attachment, by putting in bail (*a*) before satisfaction is entered: but when it is entered of record, he cannot come in after the year and a day (*b*).

This remedy by attachment is not confined to citizens, or even residents within the city; it is a common process, open to any person when his debtor has property within the jurisdiction of the court, whether the parties themselves reside or the debt arose in London or not (*c*), and the privilege of the garnishee from the usual process of the court will not prevent the attachment (*d*); but an action previously commenced in the superior courts is a bar to the remedy by attachment (*e*).

The process of sequestration is also a customary proceeding in the mayor's court, of an analogous nature to that of foreign attachment. If the debtor absconds and leaves goods in a house or warehouse locked up without any person in possession, they may be sequestered on the creditor's application by one of the serjeants-at-mace locking and sealing the doors; and four court days after a precept is granted to the proper officer to open the place and appraise the goods, on which appraisement being approved by the court, execution is granted, the plaintiff giving security to restore the goods if required, as in case of foreign attachment (*f*).

By the custom of London, the juries who serve in the city courts are returned annually to the court of alder-

(*z*) Cro. Eliz. 172; 1 Leon. 321.

(*a*) *Andrews v. Clerke*, Carth. 26; 12 Mod. 213.

(*b*) Bro. Lond. pl. 1.

(*c*) 2 Show. 507.

(*d*) Gilb. Hist. C. P. 209; *Turbill's case*, 1 Saund. 67; *Ridge v. Harcastle*, 8 T. R. 417; but property in the creditor's own hands

cannot be attached, Brownl. 60, though it would seem a debt may, Roll. Abr. 554; Cro. Eliz. 186. See 1 Saund. 67.

(*e*) 2 Show. 374; 1 Rol. Abr. 552, g.

(*f*) See Priv. Lond. 281; Lex Lond. 39, 40; 2 Rep. M. C. p. 127.

men by the different wardmotes, in an indenture containing the names of the ward officers, which are entered in a book by the town clerk (*g*), and are always composed of merchants, brokers, and the most substantial inhabitants of each ward; and consequently the juries in the lord mayor's court are of a superior order, and partake more of the character of the special juries who serve at the sittings at nisi prius than of common juries. The court, however, has the power of ordering a special jury, though it has rarely been exercised (*h*).

An action commenced in the lord mayor's court is said to remain in force for ever, although no proceedings had thereupon (*i*).

The lord mayor's court, in its controlling jurisdiction over the inferior tribunals of the city, has the power of ordering the proceedings in the sheriff's court to be brought before it by a process called a *levetur querela*, (in the nature of the *certiorari* of the superior courts at Westminster,) issued and authenticated by the signature of the lord mayor or recorder, and the proceedings are then conducted as in ordinary actions (*k*); and actions in the mayor's court, on the other hand, may be removed by *habeas corpus* or *certiorari* into the superior courts, which may be done in all cases except when it appears upon the return that the action is brought upon a custom of London, and would not lie in the superior courts (*l*).

The only court of error from the mayor's court is the court of commissioners mentioned before (*m*).

(*g*) Priv. Lond. 254.

(*h*) 2 Rep. M. C. p. 128; Lewis's Practice of the Sheriff's Court, p. 75; Emerson's City Courts, p. 56.

(*i*) Priv. Lond. 252.

(*k*) Priv. Lond. 255, 6; Emerson's City Courts. See *post*, Sheriffs' Courts.

(*l*) See 1 Ventr. 46; 2 Sellon's Practice, 276; *ante*, p. 12. Where the cause is removed into the superior

courts, the customary remedy by attachment is at an end, if goods have not been removed from the garnishee's hands, provided bail were given in the superior court, 12 Mod. 213; *sed q.* now, whether bail would be required in such a case; and *vid. ante*, p. 189, note (*g*).

(*m*) *Ante*, p. 173, note (*x*); and see *Spiers v. Clarke*, 1 Jac. & Walker, 641.

The lord mayor's court possesses the power of removing from the privileges and franchises of the city freemen who have offended against the civic laws and customs (*o*). This proceeding consists of an information filed *ex officio* by the common serjeant, who exercises his discretion upon the subject. After this the defendant, who may be summoned by the serjeant-at-mace in any part of England, may appear and traverse the information; in which case issue is joined by the common serjeant, and the facts are tried by a jury before the recorder, or he may make default; in which latter case judgment of disfranchisement issues at once. These informations are infrequent as a hostile proceeding; not more than three cases of the kind having occurred during the last century. The last instance occurred in September, 1815, when a broker was disfranchised on account of having been under age when he obtained his freedom. Informations of this kind are principally resorted to for the purpose of disfranchising freemen or officers of the corporation, in order to qualify them to give evidence in the superior courts on trials involving the privileges or laws of the city (*p*).

Where an apprentice, bound according to the custom of London, is entitled to be released from his indenture, he may obtain his discharge by a petition to the lord mayor's court. Upon this petition being filed, a summons issues to the master, which may be served upon him in any part of England. The master may then appear and traverse the facts stated in the petition, and the issue joined thereon is tried by a jury before the recorder in the ordinary course. According to the verdict the court gives judgment, either that the apprentice "take nothing by his petition," or that he "be discharged from his indenture." In the latter case, the apprentice may then file a bill on the equity side of the court against his former master, praying for a return of

(*o*) For an account of which, see *ante*, p. 70.

(*p*) 2 Rep. M. C. p. 128.

the premium, to which the master must put in his answer upon oath. The case is then heard before the recorder, who makes an order according to the merits (*q*).

The lord mayor's court has also an equitable jurisdiction over all controversies arising within the city and liberties (*r*), resembling in a great degree that of the Court of Chancery (*s*).

It is laid down by Lord Coke (*t*), that courts of equity can only exist by prescription, the crown having no power to confer such a jurisdiction by charter; and if credit is to be placed on the version of Fitz-Stephen (*u*), as to the antiquity of the civic institutions, the origin of the equitable jurisdiction of the mayor's court may be easily traced back to that of the Roman prætor, from whom the chief magistrate of London derived so many of his present functions.

If local courts for the decision of ordinary legal disputes are at all desirable, the advantage to the citizens of an expeditious and inexpensive court of equity, conducted with such high talent and respectability as the tribunal we are now speaking of, cannot be too highly prized.

The equitable jurisdiction of the mayor's court comprehends all subjects usually cognizable in the Court of Chancery, such as bills for general relief, specific performance, account, distribution, discovery, &c., including the proceeding against the garnishee in a foreign attachment for an account of assets belonging to the defendant in the action (*x*), and various other matters more immediately arising out of the peculiar customs of London, such as the return of apprenticeship premiums, the distribution of intestates' estates, and the custody and education of citizens' orphans.

The two first-mentioned customary proceedings have

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|----------------------------------------------------------------------|--------------------------------------------|
| (<i>q</i>) 2 Rep. M. C. p. 128. | <i>mer</i> , 3 Swanst. 43; 1 Vern. 43. |
| (<i>r</i>) 4 Inst. 248; Godb. 127; Skin. 67; Lex. Lond. 49, 50. | (<i>t</i>) 4 Inst. 248. |
| (<i>s</i>) See <i>Mayor of London v. Dor-</i> | (<i>u</i>) <i>Vid. ante</i> , p. 17. |
| | (<i>x</i>) Emerson's City Courts, p. 82. |

been before alluded to (y); but the latter of them, that of compelling distribution of a freeman's estate, on account of the peculiar powers of the court over orphans, is much more likely to be available here than as a mere common law remedy.

This branch of its equitable jurisdiction is exercised by the mayor's court in the character of a court of orphans (z), which has been constantly recognized by the legislature (a); but owing to the circumstances before detailed (b), has of late years gone very much into disuse. The statute 5 & 6 Will. & M. c. 10, which was passed for the arrangement of the orphans' fund, declared, "that no person should be obliged or compelled by virtue of any custom of London, or by order and process of the court of orphans, to pay into the chamber of London any sum of money, or personal estate, due or to be due, or belonging to any orphan of any freeman, any law or custom or usage enforcing the same notwithstanding." This statute, however, does not seem by any means to prevent the court of orphans from either enforcing an account of an orphan's estate, or ordering the amount afterwards to be invested in the public funds, or any other safe security, and it has accordingly been very recently made the subject of inquiry whether this ancient and salutary jurisdiction is not still in full force (c).

As a court of orphans, this court exercises a similar control over citizens' orphans to that which the Court of Chancery does over infants in general (d). By the custom of London, confirmed by act of parliament (e), as laid down in the books, if any freeman or freewoman (f) die, leaving

(y) See *ante*, p. 180, 194.

(z) 4 Inst. 248; F. N. B. 142 g.; Calth. Customs of London, p. 100.

(a) Rot. Parl. 1 Ric. II. num. 130; 13 Hen. VIII. c. 8; 12 Car. II. c. 24, s. 10.

(b) *Ante*, p. 114.

(c) *Papineau's* case before the

court of aldermen.

(d) *Andrews's* case, Hutt. 30; *Luck's* case, 247; *Strype's* Stow, lib. 5, ch. 24.

(e) Rot. Parl. 1 Ric. II. num. 130; Calth. Usages of London, p. 100.

(f) It is immaterial where the parents live, for it is a rule, that

orphans under age unmarried, the custody of their bodies and goods (if males till twenty-one, and if females till twenty-one or marriage) belongs to this court, and the executors and administrators are compelled to exhibit true inventories (*g*) of all their goods and chattels, and if any debt appear due, to bind themselves to the chamberlain to the use of the orphans, in a reasonable sum, to account for the same upon oath (*h*); and upon refusal so to do, they may be committed; and if they escape the jurisdiction of the court, the Court of Chancery will compel them by subpoena to appear there (*i*). The recognizance provides that none of the orphans marry, or be put out apprentices, without leave of the court (*k*); and even the father, it would appear, cannot devise the guardianship of his child to a person not approved of by the court of orphans (*l*).

If such orphans be taken out of the custody of the guardian appointed by the court, whether at the time within their jurisdiction or not (*m*), the court may commit the offender till he produces the infant, or be delivered by due course of law (*n*); and such commitment is a summary proceeding similar to that exercised by the Court of Chancery in cases of contempt (*o*); nor is a peer

"once a citizen always a citizen," until disfranchisement, 1 Rol. Rep. 316; 1 Sid. 256; 1 Ventr. 180; 1 Mod. 80; *Webb v. Webb*, 2 Vern. 110; and *vid. ante*, p. 194.

(*g*) A prohibition may be obtained to prevent the Ecclesiastical Court from compelling the executors to account there contrary to this custom, Hob. 247; P. 313; Rol. Abr. 550, 555, 736.

(*h*) Though the usual administration bond were given in the Ecclesiastical Court, a new security may be required by the court of orphans, *Latch's case*, Hob. 474. Debt lies upon this recognizance, either by the chamberlain or his

successor, and the chamberlain is at law a corporation sole for this purpose, Cro. Eliz. 682.

(*i*) *Mayor of London v. Dormer*, 1 Vern. 40.

(*k*) Priv. Lond. 328; *id. ib.* 323.

(*l*) *Bastian's case*, Sid. 363; the custom saved by 4 & 5 P. & Mary, c. 8, 12 Car. II. c. 24, and not repealed by 11 Geo. I. c. 18, s. 17, enabling citizens of London to dispose of their personal estate.

(*m*) 1 Lev. 32; 1 Ventr. 178; *Harwood's case*, 1 Mod. 79, S. C.

(*n*) Sid. 250; *Williamson v. Bolton*, Raym. 116. *Vid.* 1 Mod. 80; 1 Lev. 32.

(*o*) 1 Lev. 162, 3. The proper

more privileged than a commoner (*p*), peers not being exempt in any case from punishment for contempt (*q*); and upon passing judgment upon the party, a reasonable fine may be imposed by the court for marrying an orphan in defiance of their jurisdiction (*r*).

The mayor's court on the equity side is in the nature of a court of appeal from the other civic tribunals, and has power by way of injunction to stay proceedings, either on the common law side of this court, or the sheriff's court (*s*).

The lord mayor and aldermen are, as on the common law side of the court, the nominal judges, and all bills and petitions are formally addressed to them, but the recorder presides as the sole acting judge (*t*). The proceedings are by bill and answer. The bill must be drawn and signed by one of the four city counsel before alluded to (*u*); then it must be engrossed and entered in court, and one of the officers of the court must personally serve the defendant with a summons within the jurisdiction to appear and answer (*x*). The defendant has then eight court days, or about six weeks, to answer the bill; and if no answer be put in, an attachment may be issued against him. The plaintiff has the same time afterwards to except to the answer, and the pleadings are in fact conducted on nearly similar principles to those in the Court of Chancery, only in a considerably more expeditious mode, the cause being capable of being set down on bill and answer, at the option of the plaintiff, within fourteen days from the filing of the answer (*y*).

place of custody is Newgate. *Id.*
ib.

(*p*) *Id.* *ib.*

(*q*) 11 Hen. IV. 15.

(*r*) *Harwood's case*, 1 Mod. 77-9.

(*s*) Skin. 67; causes are, however, always removed into the mayor's court on the common law side, before the equitable jurisdiction is exercised. Emerson's City Courts,

p. 84; Priv. Lond. 292; on this being done, the filing the bill on the equity side is a good injunction without any further proceedings. *Id.* *ib.*

(*t*) Priv. Lond. 201; 2 Rep. M. C. p. 127.

(*u*) *Ante*, p. 167, note (*a*).

(*x*) Priv. Lond. 292.

(*y*) See the practice laid down in

The cause, when ready, is formally heard before the recorder, who then makes the decree, a copy of which must be served personally on the defendant; and on an affidavit thereof, an attachment may be obtained against him, which it appears may be executed out of the jurisdiction of the court (*z*); and it would appear that the Court of Chancery would aid the plaintiff in enforcing performance thereof (*a*).

There are various officers attached to the mayor's court, such as the chamberlain, who is in the nature of accountant-general of the court of orphans (*b*); the common serjeant, whose functions resemble those of an ordinary Master in Chancery (*c*); the town clerk, who is the general registrar (*d*) of the court, with all the duties of a master and registrar of the superior courts; and the city pleaders and attorneys mentioned before (*e*). The senior of these attorneys is clerk of the seals, and as such has to make out and affix the certificate to instruments re-

Priv. Lond. 292, *et seq.*, and Emerson's City Courts, and 2 Rep. M. C. p. 127.

(*z*) Priv. Lond. 292.

(*a*) See *Mayor of London v. Dormer*, 3 Swanst. 43; and 1 Vern. 43. Decrees of this court have now the same effect as judgments in the superior courts of common law, and all the remedies given to judgment creditors by the Imprisonment for Debt Act available therein, see 1 & 2 Vic. c. 110, s. 18. Notwithstanding, however, the very extensive jurisdiction of the mayor's court, the actual business done on the equity side is almost entirely confined to bills of discovery, and suits for compelling restitution of premiums to apprentices, where an apprentice has been turned over upon a judgment of the lord mayor's court; or where the service

has become defective in consequence of some default on the part of the master. Within the last ten years there has been only one bill for distribution of intestates' effects, and no instance of an injunction has been found, though the records of the court have been searched for that purpose. The limited amount of business in the equity department of the court may possibly be caused by the facility with which causes are removable from thence by *certiorari*, into the High Court of Chancery. 2 Rep. M. C. p. 127.

(*b*) *Ante*, p. 124.

(*c*) *Ante*, p. 120.

(*d*) *Ante*, p. 121; and 2 Rep. M. C. p. 90.

(*e*) *Ante*, p. 167, note (*a*).

quiring the mayor's seal (*f*); and the third attorney is clerk of the court of orphans (*g*).

The Sheriffs' Courts.

The two sheriffs of London have nominally each a court of record under them, which Fitz-Stephen designated by the name of *curiæ consulatus* (*h*), and which are now called compters, probably like the word county, from *comes*, and not, as is quaintly alleged by Cowell, because parties are thereby compelled to account (*i*).

These courts are holden separately at different places, and designated as "the Sheriffs' Court, holden for the Giltspur Street or the Poultry Compter," as the case may be; the latter being considered to belong to the senior sheriff, and the former to the junior: the process in each division accordingly issues in the name of the sheriff to whom that division is assigned, and the courts are technically considered to form two distinct and independent courts of judicature (*k*); to each of which distinct officers, and formerly a distinct prison, were attached; and until recently, distinct judges or deputy sheriffs, appointed by the court of common council (*l*); but a vacancy having occurred in the office of judge for the Poultry Compter, a few years ago, it has not been filled up, and, at present, one judge acts for both divisions (*m*). Though the sheriffs are the nominal judges, and all the process issues in their names, they never at this day preside (*n*). The other officers are the two secondaries of the City of London, and a prothonotary, clerk of the papers, and four clerk sitters to each division, though the prothonotaries act indiscriminately in both divisions.

(*f*) *Ante*, p. 21.

(*g*) 2 Rep. M. C. p. 91.

(*h*) 4 Inst. 247; and see *ante*, p. 2.

(*i*) Cowell's Interp. voce Compter.

(*k*) *Rideings v. Edwin*, 1 Show.

162; 2 Keb. 147.

(*l*) *Thompson v. Goodfellow*, 2 Show. 173; *Proctor v. Philip*, Hardw. 311, 327; *ante*, p. 52.

(*m*) 2 Rep. M. C. p. 86.

(*n*) *Id.* p. 130.

This court has cognizance of actions of debt, and all other personal actions at common law, arising within the city and liberties(o); and also of actions founded on the customs of London, and acts of common council, and is open to any suitor, whether a freeman or not. Ejectments appear to have been also formerly tried here, but no instance of such an action has occurred in the court for many years. It has no equitable or criminal jurisdiction.

The Poultry division of the court is held at Guildhall, on the Thursday and Saturday in each week, and the Giltspur-street division at the same place on every Wednesday and Friday. On these days, the court is always formally opened by the officers; but the judge does not attend without receiving notice that there is any business to be disposed of.

The practice in both divisions is the same. The first process is a plaint, merely containing the names of the parties and the nature of the action, which is entered by one of the clerk sitters in a book kept for that purpose. Upon the appearance of the defendant, the cause proceeds by declaration and plea, in the usual form; and judgment by default for want of appearance may be obtained in less than a week; and even a judgment and execution after verdict, within a fortnight, as the whole formal proceedings incident thereto may be completed on the day of trial(p).

The customary proceedings by attachment and sequestration(q) are in force in this court, and the expenses of legal proceedings therein are remarkably slight(r);

(o) Priv. Lond. 303, 440—3; Emerson's City Courts, pp. 49, 87.

(p) The judges of this court are always barristers of long standing; and the jury, being elected in the manner pointed out before (see *ante*, p. 193), are usually composed of the

most substantial householders.

(q) See *ante*, p. 187, *et seq.*

(r) The costs of a verdict are between £8 and £9; on writs of inquiry between £6 and £7; and in actions of debt, when the defendant makes default, or gives a cognovit,

but in all proceedings arising on the customs of London, each party pay their own costs (*r*).

Actions may be removed by defendants from this court into the lord mayor's court, at any time before the jury are actually sworn upon a trial, by the process of *levetur querela* before referred to (*s*), which operates as a stay of proceedings in the sheriff's court; and a transcript of the record being entered in the lord mayor's court, the plaintiff must declare again in that court.

A writ of error, we have seen, lies from this court to the hustings (*t*); but such removals very rarely occur at this day, there being no instance thereof within the memory of the present officers (*u*).

There is, however, a peculiar customary process open to the losing party in an action in either division of this court, called markment, enabling him, after verdict and before judgment, to apply to have the cause marked by the lord mayor.

By the ancient custom of London, as laid down in the books, where a plaint is affirmed before the sheriff of London (*x*), the mayor, at the suggestion of the plaintiff or defendant, may send for the parties; and if it be found on examination before the mayor, that the plaint is satisfied, he may award that the same shall be barred.

The course is, for the defendant's attorney, who, for this purpose, must be an attorney of the lord mayor's court, to apply to the lord mayor personally to sign the markment. Upon procuring his signature, the defendant is required to enter into a recognizance in double the amount of the verdict, to pay the debt or damages in case of affirmance, and to stand to such order as the lord

and no trial or inquiry takes place,
the costs do not exceed 3 guineas.

2 Rep. M. C. p. 130.

(*r*) *Id. ib.*

(*s*) *Ante*, p. 193.

(*t*) *Ante*, p. 173.

(*u*) 2 Rep. M. C. p. 130.

(*x*) 4 Inst. 248; 10 Hen. VI.
14 b, 15 a; Fitz. Abr. Prescription;
4 Bro. London, 30; Bro. Custom,
60; 8 Co. 126; Skinner, 67.

mayor shall make. As soon as this is done, all proceedings are stayed until the case has been examined by the lord mayor. A day is then appointed, on which the judge of the sheriffs' court attends before the lord mayor with the record and his notes of the evidence, together with the recorder and the city solicitor. The case is then argued either by the parties or their counsel or attornies, and the lord mayor has authority to order either that the plaintiff shall be barred from the recovery of his debt or damages, or that the debt or damages shall be reduced, (or abridged, as it is technically called,) or that the plaintiff shall give time to the defendant, on receiving securities for payment at a future day, or that the judgment shall be suspended until the defendant has had an opportunity to file a bill in equity for an injunction, or he may decline to interfere, and order the cause to be remanded. Unless the lord mayor awards that the judgment shall be barred, no record whatever is made of this proceeding; but if the judgment of the inferior court has been barred by the lord mayor in the manner above described, it is said that his decision might be successfully pleaded in answer to any suit brought by the plaintiff in the superior courts for the same cause (y).

The trial of writs of inquiry, and causes under £20, sent down from the superior courts, under the provisions of statute 3 & 4 Will. IV. c. 42, s. 17, except where it is otherwise specially directed, are tried, not before the judge of the sheriffs' court, but before the secondaries (z).

The Court of Requests.

The court of requests in London was originally established by act of common council, 9 Hen. VIII.; but having no power to compel the creditor to sue there, the 3 Jac. I. c. 15, (being the first act of parliament establishing a court of requests in this country,) was passed to confirm and regulate its powers, which

(y) 2 Rep. M. C. p. 131.

(z) *Id.* p. 86.

have been since further regulated and enlarged by the statutes 14 Geo. III. c. 10 ; 25 Geo. III. c. 45 ; 39 & 40 Geo. III. c. CIV., and 5 & 6 Will. IV. c. XCIV. ; and the jurisdiction of the court now extends to all disputes and differences between party and party, respecting any sum of money not exceeding £10 (*a*) ; but the creditor is not allowed to split his demand into two separate causes of action, to bring them within the jurisdiction of the court (*b*), although it is competent for him to abandon the overplus and reduce his whole demand to £10, for that purpose, if he pleases (*c*).

The claim, however, must not involve the question of title of the freehold or lease for years, not being a lease by parol, of any lands, tenements, or hereditaments, or of any chattels real, or arise by reason of the occupation of lands so situate elsewhere than within the jurisdiction of the court, or be the balance of any account originally exceeding £10, or arise by reason of any cause concerning testament or matrimony, or any thing concerning or properly belonging to the ecclesiastical court, or relate to any agreement by way of composition for or by way of retainer of tithes, or to any by-law, or any debt for tolls or customs due to any corporation or company, or in anywise relating to the franchises, privileges, or chartered rights of the mayor, and commonalty, and citizens of London, or other bodies politic or corporate, or any premium, or policy, or insurance (*d*).

The creditor need not reside within the jurisdiction of the court ; but the persons liable to be sued are declared to be all persons residing, inhabiting, or being within the city or liberties, or keeping or using any house, warehouse, wharf, quay, accounting house, chambers, lodging, office, shop, shed, stall, or stand, or employed, working, or seeking a livelihood, or trading or dealing

(*a*) 5 & 6 Will. IV. c. XCIV. s.
21.

(*b*) Sect. 26.

(*c*) Sect. 27.

(*d*) *Id.* s. 22.

within the same city, or liberties (*e*); and no privilege is allowed to exempt any person from the jurisdiction of the court, on account of his being an attorney or solicitor, or any other officer of any court of law or equity at Westminster, or of any other court whatsoever; but all attornies, solicitors, and officers are subject to the process of the court as any other persons (*f*).

The previous acts, which contained a very similar description of the parties liable to be sued, were held not to include a person having a seat in Lloyd's Coffee-house, and occasionally underwriting a policy there, but residing out of the jurisdiction of the court (*g*); nor an attorney practising in the city, without an office or residence there (*h*); nor the clerk of an attorney in the city, not gaining his whole livelihood there (*i*); nor a clerk in the excise office (*k*); nor a porter resorting to a house of call there (*l*), unless resident also; nor even a market gardener, who rented a stand with a shed over it in Fleet Market, at an annual rent, which he occupied three times a week on market days, till ten o'clock in the morning—after which, and on all other days, it was occupied by others (*m*). The 12th section of the last previous act (*n*) deprived the plaintiff of costs, if sued in the superior courts for a debt within the cognizance of this court; but the present act, whereby all the former statutes are repealed, has no such claim, although the 25th section declares that the act shall not prevent a distress or action for rent (*o*): it appears, therefore, that in ordinary actions for debts above 40*s.* and under £10,

(*e*) Sect. 28.

(*f*) Sect. 32.

(*g*) *Miller v. Williams*, 5 Esp. N. P. C. 19.

(*h*) *Gould v. Colyer*, 1 Smith, R. 334.

(*i*) *Stephens v. Derry*, 16 East, 147; *Meredith v. Drew*, 2 M. & S. 116.

(*k*) *Smith v. Hurrell*, 10 B. & C.

542.

(*l*) *Skinner v. Davies*, 2 Taunt. 196.

(*m*) *Gray v. Cook*, 8 East, 336.

(*n*) 39 & 40 Geo. III. c. 104.

(*o*) 5 & 6 Will. IV. c. XCIV. s. 25.

it is optional with the plaintiff to proceed in this court or not.

The court has jurisdiction over liquidated demands, though there are special counts, as under the acts of parliament relating to brokers' rent (*p*), or where assignees of bankrupts are concerned (*q*), or on a judgment of the superior courts (*r*); but not in cases where unliquidated damages are sought to be recovered, as in special actions on the case for breach of an agreement (*s*), or on a count for not returning goods unsold (*t*).

The commissioners are two of the aldermen (*u*), and not less than twenty inhabitant householders, possessed of an unincumbered property of £1000, appointed monthly, according to the wards; and the meetings of the court are regulated by act of common council (*x*). Three commissioners are required to be present in cases under 40s., five of them in cases under £5, and seven in cases exceeding that amount (*y*); and in default of a sufficient number attending, the court must be adjourned (*z*).

The proceedings are directed to be by summons issued by the clerk of the court, expressing the sum demanded, the nature of the demand, or cause of action, with the name of the party or body demanding the same. The summons must be served by one of the beadles, officers, or serjeants of the court, either personally on the debtor, or by leaving it with a servant or other person at his dwelling-house, or other place before specified, two clear days before the day of hearing (*a*); but in cases of joint debts, service on one of the debtors is sufficient (*b*).

(*p*) *Rex v. London Court of Requests Com.* 7 East, 292. The jurisdiction in such cases seems now taken away; see s. 22 of the present act, *ante*, p. 204.

(*q*) *Ward v. Abrahams*, 1 B. & A. 367.

(*r*) *Foot v. Crace*, 2 B. & P. 588.

(*s*) *Jonas v. Greening*, 5 T. R. 529; and *Webb v. Brown*, *id.* 535.

(*t*) *Postan v. Masser*, 4 Tyrh. 999; and see *Mansfield v. Brearey*, 1 Ad. & E. 347; 3 Nev. & M. 471.

(*u*) *Ante*, p. 30.

(*x*) 5 & 6 Will. IV. c. XCIV. ss. 4, 8.

(*y*) *Id.* s. 5.

(*z*) Sect. 7.

(*a*) Sect. 28.

(*b*) Sect. 31.

The court is invested with power to compel the attendance of witnesses living within the jurisdiction, or within five miles from Guildhall (c), and to proceed in the absence of the debtor on proof of service of the summons, or adjourn the hearing, or suspend the proceedings, or give time for payment, in case of illness or otherwise, according to circumstances (d).

No evidence is allowed to be given in support of any claim but that stated in the summons, nor of proof of set-off, unless previous notice be given (e); and no orders, decrees, judgments, or proceedings of the commissioners are removeable into any other court by *certiorari* (f); and execution may issue against goods and body, one after another; and the precept may be executed out of the jurisdiction on being endorsed by a local justice of the peace (g), and a scale of imprisonment is given for defaulters (h); with other minute regulations, too long to be here inserted.

Sittings at Nisi Prius.

The charter which we have before alluded to, declaring that the citizens of London should not be compelled to plead without the walls for any plea (i), rendered it necessary that the superior courts, who, in many cases, claimed a concurrent jurisdiction with the civic tribunals, should be held within the city walls; and it was accordingly customary, from a very early period, for the chief judges of the then superior courts at Westminster, to sit at certain defined periods, both in and out of term, as a Court of Nisi Prius in London (k). This very necessary

(c) Sect. 33.

(d) Sects. 34, 36, 38.

(e) Sect. 29. The commissioners are empowered to award costs, and the creditor is compelled to make a deposit on obtaining the summons, in order to answer the same in case of failure—sect. 38.

(f) Sect. 30.

(g) Sect. 45.

(h) Sect. 47.

(i) Charter of Hen. I. *ante*, p. 68, 168.

(k) 3 Campb. 42 n.; and on the same principle it has been held, that if the venues be laid in London, a formal trial at bar cannot be obtained, 2 Salk. 644; *Castell v. Bainbridge*, 2 Strange, 856; the venue

variation from the ordinary practice in other counties of trying cases only twice a year, was subsequently adopted in Middlesex (*l*); and by a recent statute (*m*), any one of the judges of the superior courts, to whatever court he may belong, is now authorized to sit in London and Middlesex for the trial of issues in any of such courts, such sittings altogether not to be extended beyond the six ensuing days, exclusive of Sundays, immediately after Easter Term, or the next twenty-four days after any other term (*n*).

These sittings are, however, wholly independent of the civic authorities, except that the corporation provide the courts, and also ushers and other subordinate officers to attend upon the judges (*o*).

The Central Criminal Court.

The above charter of Henry I. grants also to the citizens of London to place whom they would of themselves, for keeping and hearing the pleas of the crown, and that none other should be justice over the same men of London for any plea (*p*); and the two courts mentioned in that charter as then existing in London are the folkmote and the hustings. There are no proofs extant whether any justiciar was ever chosen for the city at large under this charter, to preside over criminal trials. The folkmote, we have seen, was the regular tribunal for inquiring and determining of all felonies (*q*); and amongst the laws of Henry I. c. 8, entitled "*de generalibus placitis comitatuū*," set forth in the Red Book of the Exchequer (*r*), it is directed, that the order of business in these courts should be, 1st, the rights of Christianity; 2nd, pleas of the crown; and, lastly, private

may, however, be changed as in other cases.

(*l*) By 18 Eliz. c. 12.

(*m*) 11 Geo. IV. c. 1; 1 Will.

IV. c. 70, s. 4.

(*n*) *Id.* s. 7.

(*o*) 2 Rep. M. C. p. 123.

(*p*) Com. Dig. Courts, O. 8.

(*q*) *Ante*, p. 170, Com. Dig. Leet,

L.

(*r*) Cap. 8; 2 Inst. 69.

causes : but whether the folkmote in London formed one general criminal court for the whole city, or such pleas were heard separately for each ward in the wardmotes, it does not appear. These local criminal jurisdictions doubtless became in process of time very objectionable (s); for one of the provisions of Magna Charta is, that no sheriff, constable, coroner, or other bailiff, should for the future hold pleas of the crown, which thenceforth were heard either by the chief justiciar or the ordinary justices of gaol delivery; and from that time the courts leet and wardmotes became mere inquest juries, so far as respects the purpose of criminal proceedings (t); but the new system being no doubt considered as an innovation on the charter of Henry I., it was provided by the first charter of Edward III. (u) that the lord mayor shall be one of the justices of gaol delivery for Newgate, and shall be named as such in every commission for that purpose (x). The lord mayor is, in pur-

(s) See the reason, 2 Inst. 30.

(t) See Norton's Comm. p. 347.

(u) Dated 8th of March in the 1st year of his reign.

(x) It was formerly insisted that all indictments and proceedings, for any cause except felony, should be tried and determined in London, and not elsewhere, Cro. Car. 128; but it has been now long settled that a certiorari lies to remove any criminal proceedings from London, Raym. 74; 3 Mod. 230; Hard. 409; 6 Mod. 246; *et vide* 5 & 6 Will. & M. c. 11; though it is said that the tenor of the indictment only is removed, and not the indictment itself, Keb. 252; Sid. 155; Bac. Abr. Customs of London, A. The claim to this privilege, on the part of the city, was shown by Noy, Att.-Gen., in an old case, to have existed as far back as the 43 Edw. III., as appears

by an exchequer record of that year. 43 Edw. III. Rot. 19; *Uspertill Tylden's* case, Cro. Car. 265. And on the ground that the record remains in the city, it has been held that an amendment may be made of an indictment in London, which could not be done were the record itself removed, for then there is nothing to amend by. Thus it is said that on a motion to amend a certiorari, removing an indictment from London, it may be done by the original record, which is not the case in other counties. *Alcock's* case, 1 Sid. 155; see also 1 Keble, 252; Hawkins, P. C. b. 2, c. 25, s. 97; *id.* c. 27, s. 26; *Cusack's* case, Cro. Car. 128. The practice, however, of returning a transcript only has been discontinued for a long series of years; and now the record is always removed, as well from London

suance of this charter, at this day always named in the commission of oyer and terminer for the City of London, and is so required to be by the Central Criminal Court Act (y). He attends at the opening of the sessions at the Old Bailey, and is supposed to be always present there, his sword remaining in court, and his seat being supposed to be unoccupied except by himself during the sessions (z). Separate commissions of oyer and terminer for London, and of gaol delivery for the gaol of Newgate, are issued at the commencement of each mayoralty; they are directed to the lord mayor (who is first named in all commissions within the city), the lord chancellor, or keeper of the great seal, the queen's ministers and secretaries of state, the judges of the superior courts at Westminster and of the admiralty, the dean of the arches, the aldermen, the recorder, the common serjeant, the judges of the sheriffs' court, and any retired judges, and others whom the crown may appoint (a).

These commissions now extend to the hearing and determining all treasons, murders, felonies, and misdemeanours, committed within the City of London and county of Middlesex, and certain parts of the counties of Essex, Kent, and Surrey; and are also commissions of gaol delivery to try prisoners in Newgate charged with offences committed within those limits; and any two or more of such justices or judges are authorized to inquire of, hear, determine, and adjudge all such treasons, murders, felonies, and misdemeanours; and all treasons, murders, felonies, and misdemeanours which might be inquired of, heard, and determined under any commission of oyer and terminer for London or Middlesex, Essex, Kent, or Surrey, or gaol delivery for Newgate: and to deliver the said gaol of Newgate, at such times and places in the said city or suburbs as by the said commissions, or any

as other places, upon the certiorari.
See *Rex v. Richardson*, 2 Leach,
560; note to 1 C. M. & R. 18.

(y) 4 & 5 Will. IV. c. 36.

(z) 2 Rep. M. C. p. 77.

(a) 4 & 5 Will. IV. c. 36, s. 1.

two of the justices or judges are appointed, and to award and issue all precepts and process, and use and exercise all powers and authorities belonging to justices of oyer and terminer and gaol delivery : and every commission remains in force till a new one is issued (*b*).

The district situated within the limits of the jurisdiction thereby established, is deemed, for the purposes of the act, one county, for all purposes of venue, local description, trial, judgment, and execution, not thereby specially provided for : and in all indictments and presentments preferred and tried before the said justices and judges, the venue laid in the margin must be thus : "Central Criminal Court to wit ;" and all offences which, in other indictments, would be laid to have been committed in the county where the trial is had, and all material facts which would be in other indictments averred to have taken place in the county where the trial is had, must, in indictments prepared and tried in the said court, be laid to have been committed and averred to have taken place "within the jurisdiction of the said court" (*c*).

The sheriffs of the City of London, and counties of Middlesex, Essex, Kent, and Surrey respectively, must execute and obey all precepts and process, which the said justices and judges award and direct unto them respectively, and must, whenever required, summon from the said City of London, and county of Middlesex, and from the parts of the said counties of Essex, Kent, and Surrey, within the act, a competent number of persons qualified according to law to inquire of, present, and try all offences and other matters cognizable by the said justices and judges : which persons so returned are declared qualified, notwithstanding they are not inhabitants of the city, county, or place, where such offences or other matters may be committed or arise (*d*).

The six next and the 14th sections of the act relate to

(*b*) Sect. 2.

(*d*) Sect. 4.

(*c*) Sect. 3.

the gaols and places of confinement for prisoners, and will be noticed hereafter (e).

Every justice or coroner acting within the limits of the act, must specify in the commitment, that the persons charged are committed under the authority of the act; and such justice or coroner must take the like examinations, informations, bailments, and recognizances, and certify the same to the said justices of oyer and terminer and gaol delivery, as required by the 7 Geo. IV. c. 64; under the fines and penalties imposed thereby; and when any persons are committed to the Surrey county gaol, for any offence cognizable under or by virtue of the present act, by a commitment, specifying that such persons are committed under the act, the sheriff of Surrey, or keeper of the county gaol, must, six days at least before the next sitting of the court, or at such other time as the said judges or justices direct, cause such persons, with their commitments and detainers, to be safely removed from the said county gaol to Newgate, for trial, without any *habeas corpus*, or other writ (f).

Costs of Prosecutors and Witnesses.

Any two of the said justices and judges may order the costs and expenses of prosecutors and witnesses, in all cases where prosecutors and witnesses are entitled by law thereto, to be paid by the treasurer of the county in which the offence would, but for the act of parliament, have been tried; and every such treasurer, or his known agent, is compelled to attend the court at every session to pay the same (g).

What Indictments are to be presented to the Grand Jury.
—No bill of indictment for any misdemeanour, (other than perjury or subornation of perjury,) which can be presented to the grand jury at any sessions of the peace for Westminster, Southwark, Middlesex, Essex, Kent, or Surrey respectively, can be presented to the grand jury

(e) See *post*, p. 240.

(g) Sect. 12.

(f) Sect. 11.

at the Central Criminal Court, unless the prosecutor or other person presenting the same, or the accused, have been bound by recognizance to appear at such court (*h*).

Times of holding the Courts.—The said justices and judges of the Central Criminal Court, or any two of them, must hold a session for the said places declared to be within the jurisdiction of the court in the City of London or suburbs, at least twelve times in every year, (and oftener if need be,) such times to be fixed by general orders of the said court to be made by eight or more of the judges of the superior courts (*i*).

Removals from Quarter Sessions.—The Court of Queen's Bench, or any judge thereof, or any commissioner of oyer and terminer and gaol delivery under the act, being a judge of any of the superior courts at Westminster, or the chief judge, or any other judge of the court of bankruptcy, or the recorder of London, may, if they think proper, issue writ or writs of *certiorari*, or other process, directed to the justices of the peace for London or Westminster, the Tower of London, the borough of Southwark, or Middlesex, Essex, Kent, or Surrey, commanding them to certify and return into the Central Criminal Court indictments or presentments found or taken before them, of any offences cognizable under the act, and the several recognizances, examinations, and depositions, relative to such indictments and presentments, so that the same offences may be tried by judges or justices of the Central Criminal Court; and also for the like purpose, by writ or writs of *habeas corpus*, to cause any person or persons in custody for any offences cognizable under the act to be removed to Newgate (*h*).

Limits of Power of Justices at Sessions.—The justices of the peace for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex,

(*h*) Sect. 13.

(*h*) Sect. 16.

(*i*) Sect. 15.

Kent, and Surrey, are prohibited from trying at quarter sessions persons charged with capital offences, or with any of the following offences committed or alleged to be committed within the limits of that act; that is to say, housebreaking, stealing above the value of £5 in a dwelling-house, horse-stealing, sheep-stealing, cattle-stealing, maliciously wounding cattle, bigamy, forgery, perjury, conspiracy, assault with intent to commit any felony, administering or attempting to administer poison with intent to kill or to do some grievous bodily harm; administering drugs or other things, or doing anything with intent to cause or procure abortion; manslaughter, destroying or damaging ships or vessels, the breaking of shops, warehouses, counting-houses, and buildings within the curtilage of dwelling-houses; killing sheep with intent to steal the carcasses, the uttering of all forged instruments, and the various offences enumerated in the Forgery Act (l); forging the assay marks on gold or silver plate, and all the offences enumerated in the Coining Act (m); the abduction of women, bankrupts not surrendering under their commission or concealing their effects, breaking down bridges and banks of rivers, taking rewards for helping to recover stolen goods; personating any officer, seaman, or other persons, in order to receive any wages, pay, allowance or prize-money due or supposed to be due, or any out-pensioner of Greenwich Hospital, in order to receive any out-pension allowance due or supposed to be due; sending threatening letters and using threats to extort money; larceny on navigable rivers and canals, and stealing and destroying goods in process of manufacture, and larcenies after a previous conviction, embezzlement, larceny by clerks and servants, and receiving stolen goods, whether such person or persons be charged as principal or accessory (n).

Recognizances at Sessions to be binding in this Court.

(l) 1 Will. IV. c. 66.

(n) 4 & 5 Will. IV. c. 36, s. 17.

(m) 2 Will. IV. c. 34.

—Every recognizance entered into for the prosecution before such justices of the peace of any person for any such offence, or for appearance to give evidence, or to answer the same, shall in any of such cases be obligatory on the parties in the Central Criminal Court. Provided, that in removals from London or Westminster, the Tower, Southwark, Middlesex or Surrey, two days' notice, and in removals from Essex and Kent, one week's notice thereof be given, either personally or by leaving the same at the place of residence described in the recognizance, and the party applying for the writ must enter into a recognizance to give such notice, and do such other things as the court may direct (n).

Removals of Cases from Sessions by Magistrates.—Such justices of the peace may, if they think fit, certify, transmit, and deliver to the Central Criminal Court any indictment or presentment found or taken before them at sessions, in the same manner as to the ordinary gaol delivery at the assizes (o).

Table of Fees.—The judges or justices at the Central Criminal Court sessions are authorized and required from time to time to make a table of fees and allowances to be received by the officers of the court, to be hung up in the court, and copies transmitted to the clerks of the peace for Middlesex, Essex, Kent, and Surrey; or such judges or justices may settle a salary in lieu of such fees and allowances, to be paid to the said officers, or either of them, for the performance of their respective duties, and order how and by whom such fees and allowances or salaries shall be paid, and also order such portion as they think fit of the expense of preparing calendars and sessions papers, and of other expenses incident to the act, to be borne and paid by the treasurer of each of the said counties, but the county of Middlesex is not to be liable to any portion of the expense of preparing calendars or session

(n) Sect. 18.

(o) Sect. 19.

papers, or of any other expenses incident to the act, which it would not otherwise be liable to (*p*).

Other Courts sitting at same Time.—The general or quarter sessions may still be held during the sitting of the Central Criminal Court, and any other commission of oyer and terminer be issued into Essex, Kent, or Surrey, but not so as to oblige the justices or judges thereunder to inquire of, hear, or determine any offence, or deliver the gaols of any offender liable to be tried at the Central Criminal Court (*q*).

Cases within the Admiralty Jurisdiction.—The Central Criminal Court has jurisdiction over offences committed on the high seas, and other places within the jurisdiction of the Admiralty, and to deliver the gaol of Newgate of persons charged with any such offences; and any three of the said judges or justices may direct payment of the expenses of such prosecutions in manner prescribed and directed by the 7 Geo. IV. c. 64 (*r*).

The rights of the city and their officers are reserved, and the mayor's court is authorized to be held during the sittings of the Central Criminal Court as heretofore (*s*).

The sittings of the Central Criminal Court are generally appointed at the October sessions by the recorder after consulting the judges. Two of the judges of the superior courts attend at each session to try capital charges and the more serious offences. By a recent arrangement, two courts are now constantly sitting each session; in one of which the judges of the superior courts preside, and in the other, the recorder, common serjeant, or judge of the sheriffs' court. The recorder usually sits in the evening during each session, with a London jury, to try offenders for crimes committed within the city. The common serjeant or the judge of the sheriffs' court also presides in the evening in a second court for the same

(*p*) Sect. 20.

(*q*) Sect. 21.

(*r*) Sect. 22.

(*s*) Sect. 23.

purpose. It is understood that in each court one alderman at the least must always be present.

The recorder always passes the sentences as representing the lord mayor, the first commissioner; but the other commissioners make a minute of the sentence in cases tried before them, which is adopted by the recorder in formally passing sentence at the end of the session (*t*); and the duties of the recorder after the termination of the sessions have been noticed in another place (*u*).

THE GUILDHALL SESSIONS.

The sessions of the peace for the City of London are holden eight times in the year (*x*), commencing on the day before the sessions at the Old Bailey (*y*). The judges are the lord mayor, aldermen, and recorder, any four of whom form a quorum; but the recorder is the acting judge, who charges the jury and delivers the judgments of the court (*z*). The jurisdiction of the sessions of the peace, strictly speaking, extends to the trying and determining all felonies and trespasses whatsoever (*a*), "though," says Sir William Blackstone (*b*), "they seldom if ever try any greater offence than small felonies within the benefit of clergy; their commission providing, that if any case of difficulty arises, they shall not proceed to judgment but in the presence of the justices of the Courts of Queen's Bench or Common Pleas, or one of the judges of assize; and, therefore, murders and other capital felonies are usually remitted for a more solemn trial to the

(*t*) 2 Rep. M. C. p. 136.

(*u*) *Ante*, p. 118.

(*x*) The Southwark sessions are holden four times in the year, before the lord mayor, the aldermen who have passed the chair, and the recorder. 2 Rep. M. C. p. 135. The sessions for the county of Middlesex, which are wholly unconnected with the corporation, are held eight times in the year, though they need not be

held more than twice. 14 Hen. IV. c. 4; see *Rex v. Mullaney*, 6 Car. & P. 98.

(*y*) This is authorized by the Central Criminal Court Act, 4 & 5 Will. IV. c. 36, s. 21.

(*z*) 1st charter of Edw. IV.; 2 Rep. M. C. p. 135.

(*a*) 34 Edw. III. c. 1.

(*b*) 4 Bl. Com. 271.

assizes. They cannot also try any new-created offence, without express power given them by the statute that creates it (*b*).

The power of the courts of sessions of the peace for London and Westminster, the Tower, Southwark, or the counties of Middlesex, Essex, Kent, and Surrey, are, however, as we have seen (*c*), taken away in cases of felony or misdemeanours, partaking of the nature of felony, and confined therefore to the trial of appeals and minor misdemeanours. Their jurisdiction as to taking or finding indictments is not, however, affected by the act of parliament; these courts may therefore proceed as heretofore, up to the taking of the indictment, in all cases previously within their jurisdiction, but the *trial* must take place in the Central Criminal Court (*d*).

The jurymen of the London sessions are summoned by a precept in the names of the justices tested by the lord mayor; one panel only is for the grand and petty juries, from which twenty-three names are first taken by ballot for the grand jury, and twelve others for the petty jury (*e*).

Every juror is required to be a householder or occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade or commerce within the city, having lands, tenements, or personal estate of the value of £100 (*f*).

There is no exclusive privilege for counsel or attornies.

The Wardmote.

The wardmote held in each ward in London is nothing more than the ordinary court leet (*g*), estab-

(*b*) 4 Mod. 379; Salk. 406; Ld. Raym. 1144; 4 Inst. 170; 2 Hal. P. C. 42; 2 Hawk. P. C. 32.

(*c*) *Ante*, p. 213, *et seq.*

(*d*) Chitty's *Burn's Justice*, tit. Sessions of the Peace, s. 4.

(*e*) 2 Rep. M. C. p. 135.

(*f*) 6 Geo. IV. c. 50, s. 50. This seems still in force, notwithstanding 5 & 6 Will. IV. c. 76, s. 123. See Dickenson's *Quarter Sessions*, by Talfourd, p. 112.

(*g*) See 12 Edw. IV. c. 8.

lished throughout the kingdom in the time of the Saxons, under the lord of the *soc* or manor (*h*) ; and these courts in London, as we have seen, have ever been under the superintendence of the aldermen (*i*). Their jurisdiction was anciently very extensive, having not only the view of frankpledge (then a very important ceremony) (*h*), and the election and removal of officers (*l*), but also a power to hear and determine criminal offences (*m*). This last branch of their jurisdiction was expressly taken away by Magna Charta (*n*), and henceforward the wardmote court had only power to inquire into offences, and present them to the superior tribunals,—a power which it nominally exercises at the present day, under the ancient articles of wardmote inquest (*o*), which, for the most

(*h*) 2 Inst. 71.

(*i*) *Ante*, p. 28.

(*k*) *Ante*, pp. 24, 25, 347.

(*l*) See *ante*, pp. 28, 69.

(*m*) See Norton's Comm. p. 47, *et seq.*

(*n*) C. 17.

(*o*) Articles of the charge of the wardmote inquest:—

"You shall truly inquire if any person keep any bawdy house, gaming house, or other house of ill fame, or keep an alehouse, or victualling house, or sell beer or ale without a license.

"Also if any freeman against his oath made, conceal, colour, or cover the goods of foreigners, by which the Queen may in anywise lose or the franchise of this city be emblemished.

"Also if any officer by colour of his office do extortion to any man.

"Also if any man encroach or take of the common ground of this city.

"Also if any common way or common course of water be fore-

closed or letted, that it may not have its course as it was wont, to the annoyance of the ward, and by whom it is done.

"Ye shall diligently make search and inquiry whether there be any vintner, innholder, alehouse keeper, or any other person or persons whatsoever within this ward, that do use or keep in his or their house or houses any measures which be unsealed, and by law not allowed to sell wine, beer, ale, or other liquor thereby, and whether any of them do sell by measures not sealed.

"Also if any person within the ward do sell any goods, wares, and merchandize by false scales, weights, and measures.

"Also forasmuch as it is thought that divers ordinary persons dwelling within the liberties of this city, daily occupy as freemen, whereas indeed they be none, nor ever were admitted into the liberties of this city. Ye shall, therefore, require every such person dwelling within the ward, whom ye shall suspect of the same,

part, merely point out the general duties of leet juries (*p*), who, being chosen from the resident inhabitants, are doubtless the best qualified judges of the characters of their neighbours, and the abuses which require correction.

The wardmote inquest are chosen on St. Thomas's day, by the householders of the ward paying scot and bearing lot. They must not be less than twenty-four, and may be either freemen or non-freemen. The members perambulate the ward from time to time, and make presentment of the matters given them in charge.

The wardmote presentments are returned to the court of aldermen, and are now referred by the court either to the chamberlain or the alderman of the ward. If they relate to non-freemen, the former issues process against them; if to disorderly houses, &c., the alderman in his discretion directs a prosecution, which is conducted by the city solicitor (*q*). An unrepealed act of common

to show you the copy of his freedom, under the seal of the office of the chamberlain of the said city, and such as ye shall find without their copies, or deny to show their copies, ye shall write and present their names in your indentures; also if any be dwelling within this ward, which do offer or put to sale any wares or merchandize in the open streets or lanes of the city, or go from house to house to sell the same, commonly called hawkers.

"Also if any have fraudulently or unduly obtained the freedom of this city.

"You shall assemble yourselves twice or oftener (if need require) so long as ye shall continue of this inquest, and present the defaults, which you shall find to be committed concerning any of the articles of your charge, to the end due remedy may be speedily applied, and the

offenders punished as occasion shall require.

"And in making your presentments your clerk is carefully to write the Christian and surname, and addition and calling of every offender, and the name of the parish wherein the offence was committed, and some certain time how long the offence hath been continued, in order to the better prosecution thereof; and also to write in the margin, on the side of every presentment, the name or names, upon whose evidence you make such presentment, and that you set down at the bottom of your indentures the names of one or more persons, either among yourselves or others, whom ye shall agree on to prosecute your presentments.

"God save the Queen."

(*p*) See for this Com. Digest; and Burn's Justice, tit. Lect.

(*q*) 2 Rep. M. C. v. 137.

council (*r*) directs the alderman to repair to his ward once in every month, and calling to him his deputy, and the common council and others to take into consideration the matters presented by the inquest, and to take care that speedy reformation be had therein. This act is not literally observed, though the spirit of it was under the old police system in some degree preserved (*s*), and it would therefore be a very desirable reform at this day, when the police are appointed independently of the ward authorities, if the provisions of this law were enforced, in order to preserve that due surveillance over the force without which no body of men will long remain really efficient.

THE POLICE COURTS.

The last courts of justice that we have now to speak of are the police courts; and though the general design of this work is confined to the City of London, yet as the administration of justice in all the police courts of the metropolis has been lately placed on one uniform plan, we must necessarily make an exception in the present instance.

The vast power given by various early statutes to ordinary justices of the peace, to the exclusion of corporation officers, who are not, by common law, as we have seen, conservators of the peace at all (*t*), rendered it necessary, in order to secure the good government of London, that the civic functionaries should be armed with similar powers; accordingly the lord mayor (*u*), aldermen (*x*), and recorder (*y*), were at various periods appointed justices of the peace for the City of London, and except those aldermen who have not passed the chair, are also justices of Southwark (*z*); and the lord mayor was authorized to nominate

(*r*) 22 October, 8 Jac. I.

(*s*) 2 Rep. M. C. p. 137.

(*t*) See *ante*, p. 127.

(*u*) *Ante*, p. 22.

(*x*) *Ante*, p. 29.

(*y*) *Ante*, p. 118.

(*z*) Charters 1 Edw. III., 23 Hen. VI., and 4 Edw. VI., *ante*, pp. 22, 30, and 118. Their jurisdiction is, however, only concurrent

to the lord chancellor, two aldermen of the city, to serve the respective offices of a justice of the peace for Middlesex and Surrey (*a*); and as late as 1678, the lord mayor seems to have presented justices for Middlesex, Surrey, Kent, Essex, and Westminster, though the privilege has not been since exercised (*b*).

In the vastly increasing state of the environs of the metropolis, however, it became evident that some more systematic police regulations should be adopted than those established over the rest of the kingdom; and accordingly, during Mr. Pitt's administration, paid magistrates for Westminster and Middlesex were appointed, with proper police offices (*c*), and various acts of parliament were subsequently passed for their regulation (*d*); and by two several acts of parliament passed in the present reign (*e*), for regulating the police courts of the metropolis, power is given to the queen in council to order and re-organize the police courts, and appoint any number of magistrates to such courts, not exceeding in all twenty-seven, (from barristers of seven years' standing, or four years' standing at the bar, and three years' standing under the bar as special pleaders,) with proper officers under them, as clerks, ushers, &c., and various particular provisions are made for their regulation (*f*). By a provision made in the last of these acts, any two aldermen in London are

with that of the ordinary justices.

Res v. Sainsbury, 4 T. R. 451.

(*a*) Charters 25 Hen. VI., and 20 Hen. VII.

(*b*) 2 Rep. M. C. p. 77.

(*c*) By 32 Geo. III. c. 53.

(*d*) 36 Geo. III. c. 75, repealed by 42 Geo. III. c. 76, continued 47 Geo. III. st. 1, c. 37, repealed by 51 Geo. III. c. 119, continued 1 Geo. IV. c. 66, repealed 1 & 2 Geo. IV. c. 118, continued 3 Geo. IV. c. 55; 6 Geo. IV. c. 21; 3 & 4 Will. IV. c. 19, which is expired.

(*e*) 2 & 3 Vict. c. 71; and 3 & 4

Vict. c. 84.

(*f*) 2 & 3 Vict. c. 71, ss. 2, 3; and 3 & 4 Vict. c. 84, s. 2. By virtue of two Orders of Council, dated respectively the 3rd October, and 10th November, 1840, two additional police courts are established; and the present courts are Bow Street, Queen Square, Marlborough Street, Marylebone, Hatton Garden, Worship Street, Lambeth Street, Thames Police, Union Hall, Greenwich and Woolwich; and the above Orders define the boundaries of their respective jurisdictions.

invested with all the powers given to these police magistrates, and therefore the provisions of the two statutes apply as well to the city as to the metropolitan police district (g).

Upon any information or complaint to be laid or made before any police magistrate of any matter which such magistrate is authorized to hear and determine summarily, the magistrate may summon the party charged, and if such party do not appear according to the tenor of the summons, any one of the said magistrates, upon proof of the service of the summons, may proceed, in all cases which are not of a criminal nature, if no sufficient cause shall be shown for the non-appearance of the party, to hear and determine the case in the absence of the party, and in all criminal cases issue his warrant for apprehending and bringing such party before him, or some other magistrate, in order that the said information or complaint may be heard and determined.—s. 19.

Every such summons may be served by delivering a copy of the summons to the wife or servant, or some adult inmate of the family of the party, at his usual place of abode, and explaining the purport thereof to such wife, servant, or inmate.—s. 20.

Every such magistrate may, without issuing any summons, forthwith issue his warrant for the apprehension of any person charged with any offence cognizable before

(g) By the 2 & 3 Vict. c. 84, ss. 6, 15, any two justices of the peace for the city and liberties of London have, within their jurisdiction, all the powers and privileges of a police magistrate, and to constitute a police court under the above acts of parliament. The city police courts are, therefore, to all intents and purposes, placed upon the same footing as those in the rest of the metropolis. The limits of the two city police courts, the Mansion-

House and Guildhall, have been noticed before, *ante*, p. 22. A question was lately proposed, whether the jurisdiction of the civic magistrates in Southwark was taken away by the police acts, and it is now agreed that the aldermen have no power as justices in Southwark, except in poor law cases, and other matters not within the provisions of the acts of parliament. See Minutes of Common Council, 28 Oct. 1841.

him whenever good grounds for so doing shall be stated on oath before him.—s. 21.

Any such magistrate may summon *any witness* to appear and give evidence before him upon the matter of any offence cognizable before such magistrate with which any person is charged before him, at a time and place appointed for hearing the information or complaint; and by warrant under his hand and seal, may require any person to be brought before him who neglects or refuses to appear to give evidence at the time and place appointed in such summons, proof upon oath being first given of *personal* service of the summons upon the person against whom such warrant is granted; and such magistrate may commit any person coming or brought before him, who refuses to give evidence, to any house of correction within the metropolitan police district, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined; and in case of such submission, the order of any such magistrate is a sufficient warrant for the discharge of such person.—s. 22.

Every person, upon any examination upon oath or affirmation before any magistrate acting at any one of the said courts, wilfully and corruptly giving false evidence, or wilfully and corruptly swearing or affirming any thing which shall be false, is liable to the penalties of perjury.—s. 23.

Stolen Property, &c.—Every person brought before any of the said magistrates charged with having in his possession, or conveying in any manner, anything reasonably suspected of being stolen or unlawfully obtained, and not giving a satisfactory account thereof, shall be deemed guilty of a misdemeanour, and be liable to a penalty not exceeding £5, or, at the magistrate's discretion, may be imprisoned in any gaol or house of correction within the metropolitan police district, with or without hard labour, for any term not exceeding two calendar months.—s. 24.

On information given on oath to any of the said magis-

trates that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in any dwelling-house or any other place, the magistrate may, by special warrant under his hand, direct any constable to cause such dwelling-house or other place to be entered and searched at any time of the day, or by night, if power for that purpose be given by such warrant; and the said magistrate, if it appear to him necessary, may empower such constable, with such assistance as may be found necessary (such constable having previously made known his authority) to use force for the effecting of such entry, whether by breaking open doors or otherwise; and if upon search thereupon made any such thing is found, then to convey the same before a magistrate, or to guard the same on the spot until the offenders are taken before a magistrate, or otherwise disposed of in some place of safety, and moreover to take into custody and carry before the said magistrate every person found in such house or place, who appears to have been privy to the deposit of any such thing, knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained.—s. 25.

When any person is brought before any such magistrate charged with having or conveying any thing stolen or unlawfully obtained, and declares that he received the same from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, such magistrate is authorized and required to cause every such person, and also, if necessary, every former or pretended purchaser, or other person through whose possession the same has passed, to be brought before him and examined, and to examine witnesses upon oath touching the same; and if it appear to such magistrate that any person has had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, every such person shall be deemed guilty of a misdemeanour, and to have had possession of such thing at the time and place

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when and where the same was found and seized; (and the possession of a carrier, agent, or servant, is deemed to be the possession of the employer;) and the penalty inflicted is a fine not exceeding £5, or, in the magistrate's discretion, imprisonment with or without hard labour, for not exceeding three calendar months.—s. 26.

In case of goods being stolen or unlawfully obtained, or after being lawfully obtained being unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint thereof made to any of the said magistrates, and that such goods are in the possession of any broker, dealer in marine stores, or other dealer in second-hand property, or of any person advancing money thereon within the metropolitan police district, power is given to the magistrate to issue a summons or warrant for the appearance of such broker or dealer, and for the production of the goods; and to order such goods to be delivered up to the owner thereof, either without any payment, or upon payment of such sum, and at such a time as the magistrate may think fit; and every broker or dealer, after being so ordered, refusing or neglecting to deliver up the goods, or disposing of or making away with the same after notice of their being stolen or unlawfully obtained, is liable to forfeit to the owner the full value thereof, to be settled by the magistrate without prejudice to any action at law for such goods, commenced within six calendar months next after the magistrate's order.—s. 27.

The 28th section, reciting that doubts had arisen whether goods unlawfully pledged, pawned, or exchanged, might be restored to the owner in cases of summary conviction, or where the goods are produced without a search warrant; gives power to any magistrate to order that any such goods which shall be brought before him, and the ownership of which shall be established to his satisfaction, be delivered up to the owner, with or without compensation, at the magistrate's discretion.

If any goods or money charged to be stolen or fraudulently obtained are in the custody of any constable, by virtue of any warrant of a justice, or in prosecution of any charge of felony or misdemeanour in regard to the obtaining thereof, and the person charged with stealing or obtaining possession as aforesaid shall not be found, or shall have been summarily convicted or discharged, or tried and acquitted, or tried and found guilty; but the property so in custody shall not have been included in any indictment upon which he shall have been found guilty; the magistrate is empowered to make an order for the delivery of such goods or money to the party appearing to be the rightful owner, or make such other order as he thinks fit: without prejudice to any action at law for such goods, to be brought within six calendar months from the date of such order.—s. 29.

When any goods or money charged to be stolen or unlawfully obtained, and of which the owner is unknown, are ordered by any magistrate to be delivered to the receiver of the metropolitan police force, in case of no owner appearing to claim the same within twelve calendar months, the property may be sold or disposed of for the benefit of the superannuation fund.—s. 30.

Costs.—Power is given to the magistrate, whether or not a warrant or summons has issued, to award costs between the parties to any charge or complaint—s. 31; and amends not exceeding £5, at the magistrate's discretion, may be also awarded, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, in any case in which any information or complaint of any offence shall be laid or made before any such magistrate, and shall not be further prosecuted, or there shall appear to be no sufficient ground for making the charge—s. 32.

Compounding Informations.—In case of any person lodging any information before a magistrate for any offence alleged to have been committed, by which he was not personally aggrieved, and afterwards directly or indi-

rectly receiving without the magistrate's permission any sum of money or other reward for compounding, delaying or withdrawing the information, power is given to the magistrate to issue his warrant or summons, as he may deem best, for bringing before him the party charged with the offence of such compounding, &c., and on proof thereof by confession or oath of any credible witness, to inflict a penalty not exceeding £10 on the informer.—s. 33.

Where by any act now in force or hereafter to be passed, a moiety or other fixed portion of the penalty or penalties thereby imposed is or shall be directed to be paid to the informer, not being the party aggrieved, the convicting magistrate may adjudge that no part, or such part only as he thinks fit, shall be paid to the informer.—s. 34.

Mitigation of Penalty.—Where by any such act a limited penalty or term of imprisonment is imposed upon conviction of an offender before a justice or justices of the peace, the convicting magistrate may reduce or lessen such penalty or term of imprisonment in such manner as he thinks fit: with an exception, however, of penalties under acts relating to the customs or excise, stamps or taxes, which must not be reduced below the amount specified therein, without the consent of the respective commissioners.—s. 35.

Power to take Bail.—The magistrate may, if he think fit, remand for further examination, or suffer to go at large, any person charged before him with any felony or misdemeanour, upon his personal recognizance (with or without sureties); and every such recognizance must be conditioned for the appearance of such person before the same or some other of the said magistrates, for further examination, or to surrender himself to take his trial at the Central Criminal Court, or at general or quarter sessions, at a day and place therein mentioned; and the magistrate is at liberty from time to time to enlarge every such recognizance to such further time as he shall

appoint; and every such recognizance which is not enlarged must be discharged without fee or reward, when the party has appeared according to the condition thereof: but whenever any magistrate takes the recognizance of any person to appear at the Central Criminal Court, or at general or quarter sessions, he must return the depositions in the case, and bind over the witnesses to appear and give evidence in like manner as if he had committed the party to take his trial at such court.—s. 36 (*h*).

Disputes between Persons employed on the Thames.—All differences, complaints and disputes between any bargemen, lightermen, watermen, ballastmen (except Trinity ballastmen), coal-whippers, coal-porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers working for hire in or upon the river *Thames*, or the docks, creeks, wharfs, quays, or places adjacent, and the owners, masters, or commanders of vessels, or their agents, on the said river, or the docks or creeks adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work or loss of time, whether the same persons be employed for any certain time, or in any other manner, may be heard and determined by any of the said magistrates; and every such magistrate is empowered to examine upon oath any such labourer as aforesaid, or any other witness or witnesses, touching any such dispute, and to make such order for payment of such wages or money as he thinks fit, not exceeding £5, besides all reasonable costs attending the prosecution of the complaint.—s. 37.

Damaging Houses, &c.—Every person occupying, or who shall have occupied any house or lodging within such district as tenant, wilfully or maliciously doing any damage to the premises, or to any furniture thereof, not

(*h*) The provisions of this section are extended to cases where the trial is to take place in either of the

counties of Essex, Hertford, Kent or Surrey, by 3 & 4 Vict. c. 84, s. 9.

being the property of such tenant or occupier, may, on complaint made to one of the said magistrates within one calendar month next after the commission of the offence, or the end of the tenancy or occupation, forfeit and pay such sum of money as shall appear to the magistrate to be a reasonable compensation for the damage done, not exceeding £15, to the landlord or party aggrieved.—s. 38.

Illegal Distresses.—On complaint made to any of the said magistrates by any person who shall, within the said district, have occupied any house or lodging by the week or month, or whereof the rent does not exceed the rate of £15 per annum, that his goods have been taken from him by an unlawful distress, or that the landlord, or his broker, or agent, has been guilty of any irregularity or excess in respect of such distress, the magistrate is empowered to summon the party complained against, and if upon the hearing of the matter it appear to the magistrate that such distress was improperly taken, or unfairly disposed of, or that the charges made by the party distraining or attempting to distrain are contrary to law, or that the proceeds of the sale of such distress have not been duly accounted for to the owner, the magistrate may order the distress so taken, if not sold, to be returned to the tenant on payment of the rent appearing to be due at such time as the magistrate shall appoint, or if the distress shall have been sold, then to order payment to the said tenant of the value thereof, deducting thereout the rent appearing to be due, such value to be determined by the magistrate; and such landlord or party complained against, in default of compliance, to forfeit to the party aggrieved the value of such distress, not exceeding £15, to be determined by the magistrate.—s. 39.

Detention of Property.—Upon complaint made to any of the said magistrates by any person claiming to be entitled to the property, or possession of any goods detained by any other person within the said district, of no greater value than £15, and not being deeds, muniments or papers relating to any property of greater value than

£15, the magistrate is empowered to summon the person complained of, and to inquire into the title thereto, or to the possession thereof; and if it appear to the magistrate that such goods have been detained without just cause, after due notice of the claim made by the complainant, or that the person detaining such goods has a lien or right to detain the same by way of security for the payment of money, or the performance of any act by the owner, the magistrate may order the goods to be delivered to the owner either absolutely or upon tender of the amount appearing due (to be determined by the magistrate), or upon performance, or upon tender and refusal of the performance of the act, for the performance whereof such goods are detained as security; or if such act cannot be performed, then upon tender of amends for non-performance thereof (the nature or amount of such amends to be determined by the magistrate); and every person neglecting or refusing to deliver up the goods according to such order, shall forfeit to the party aggrieved the full value thereof, not exceeding £15, to be determined by the magistrate, without prejudice to any action at law for the recovery of such goods, to be brought within six months of such order.—s. 40.

Removal of Nuisances.—If the guardians of the poor of any union or parish, or the churchwardens and overseers of the poor of any parish within the district, together with the medical officer for any such parish or union, are of opinion (certified under the hands of two or more of their body and of the medical officer) that any house or part of any house within such union or parish is in such filthy and unwholesome condition that the health of the inmates or of the public is thereby affected or endangered, any magistrate acting within the district in which such union or parish is situate, may, if he think fit, cause notice to be affixed on the door or other conspicuous part of such house, requiring the occupier or occupiers of such house or part thereof to appear before him to answer such complaint, or to cause the same to be

cleansed within seven days from the date of affixing such notice; and in default of compliance with such notice, and the occupier or occupiers not appearing and showing good cause to the contrary, the magistrate may, on proof of the facts, issue an order under his hand and seal to the guardians of the poor, or the churchwardens and overseers aforesaid, to cause such house or part thereof to be cleansed at the occupier's expense, the amount thereof to be levied, in case of non-payment, by distress and sale of such occupier's goods and chattels, by warrant under the said magistrate's hand and seal.—s. 41.

No other but police justices to take fees within the police district—s. 42; and a table of fees is required to be hung up in the courts.—s. 43.

Proceedings on Information before Magistrates.—All offences punishable under the act on summary conviction before a justice or justices of the peace, may be heard and determined by any of the said magistrates (i) sitting at one of the said police courts, in a summary way, within six calendar months at the farthest next after the commission of the offence, or within any shorter time limited by the act specifying the offence, and not afterwards, whether or not any information in writing has been exhibited, or taken by or before such magistrate; and all such proceedings by summons without information in writing are declared to be as valid and effectual as with it: but a note or memorandum in writing, according to a form to be approved by the secretary of state, must be made and kept in the court, of the substance of every charge for which a summons or warrant is issued; and the magistrate may, if he think fit, require an information in writing to be laid in every case when it seems to him expedient, before the complaint or charge is brought before him; and thereupon the magistrate may examine into the case, and convict or acquit the accused party at his discretion.—s. 44.

(i) Or two of the city justices, *ante*, note (g), p. 223.

All penalties, forfeitures, and other sums of money imposed, awarded, or ordered to be paid by any magistrate under the acts, and all sums of money which any person is bound to pay under any recognizance taken before a magistrate, and afterwards forfeited, in case of non-payment thereof, may be levied, with the costs of such proceedings on non-payment, by distress and sale of the goods and chattels of the offender or person liable to pay the same, by warrant under the magistrate's hand, and the overplus (if any) of the money so raised or recovered, after discharging with costs the penalty, forfeiture, or sum ordered to be paid, must be returned on demand to the party whose goods and chattels are distrained; and in case any such penalty, &c. shall not be forthwith paid, the magistrate may order the party to be detained until return can be conveniently made to the distress warrant, unless such party give security, to the magistrate's satisfaction, for his appearance at the place and time named in the warrant, not exceeding seven days from the time of detention, such security to be by way of recognizance or otherwise; and in default of effects to satisfy such distress warrant, the party may be committed to gaol or the house of correction by the magistrate's warrant for not exceeding one calendar month, for sums not exceeding £5, or three calendar months in other cases, or until payment of the sum due.—s. 45 (k).

The form of the conviction is given in the act, s. 48, and also a power of appeal to the quarter sessions, s. 49; and the usual provisions are made as to informalities in the distress, tender of amends, and limitation of actions.

By the 3 & 4 Vict. c. 84, further powers are given to the police magistrates. The 11th section inflicts a penalty not exceeding £10, on persons obtaining any sum of money or

(*) Accounts are directed to be kept of the penalties, and the share of the crown is directed to be paid

to the receiver of police for the use of the force.—ss. 46, 47.

other reward from any person within the limits of the act, by threatening, directly or indirectly, to lodge any information or make any complaint before any magistrate, justice, or justices, for any misdemeanour, or as an inducement for forbearing to lay such information or make such complaint.

Appeal from Inquest Presentments.—All persons thinking themselves aggrieved by any presentment of any leet jury, or court leet for any hundred or manor within the metropolitan police district, or of any person or persons appointed at any such court leet, with respect to examining or regulating, seizing, breaking, or destroying any weights, balances, or measures, may, within fourteen days next after such presentment or proceeding, appeal to any one of the police magistrates, first giving seven days' written notice of such appeal, and of the grounds and nature thereof, to the steward of the court, or to such other party against whom the complaint is intended to be made, and forthwith after such notice entering into a recognizance before any one of the said magistrate, conditioned to try the appeal, and abide the order and award of the court thereon; and the attending magistrate at the court appealed to must appoint a time for hearing such appeal, with full power to mitigate, reverse, or confirm the proceedings of the leet, and award costs and satisfaction to the party aggrieved; and no proceedings must be taken in pursuance of the leet presentments pending such appeal.—s. 12.

Recovering Possession of Deserted Premises.—In cases under the acts for giving possession of deserted premises (*l*), where such acts empower two justices to put the landlord or lessor in possession of such deserted premises, any one of the police magistrates (*m*), upon the request of the lessor or landlord, or his or her bailiff or receiver, made in open court, and upon proof given to

(*l*) 11 Geo. II. c. 19; and 57
Geo. III. c. 52.

(*m*) Or two aldermen in the city,
ante, p. 223, note (*g*).

the satisfaction of such magistrate of the arrear of rent and desertion of the premises by the tenant, may issue his warrant, directed to a police constable, requiring him to go upon and view the premises, and to affix thereon the notices required under the said acts to be affixed by two justices of the peace; and upon the return of the warrant, and upon proof being given to the magistrate's satisfaction that it has been duly executed, and that neither the tenant nor any person on his or her behalf has appeared and paid the rent in arrear, and that there is no sufficient distress upon the premises, the magistrate may issue his warrant to a police constable, requiring him to put the landlord or lessor into possession, which warrant shall be executed, subject to the ordinary provisions (n) of warrants directed to such constables, and the lease of the premises thenceforth be void.—s. 13.

The police courts in the metropolis have also peculiar powers given to them by the different sewers and paving acts, and other local statutes noticed in the present work, which it will be unnecessary further to speak of in this place.

(n) See 2 & 3 Vict. c. 47, s. 13.

CHAPTER XIV.

THE GAOLS AND HOUSES OF CORRECTION.

GAOLS are of such universal public concern, that none can now be legally erected by any less authority than an act of parliament(*a*); and all prisons and gaols, under whosever care they may be, are considered to belong to the crown (*b*); the sheriff, therefore, as the chief officer of the crown within the county, has ordinarily the custody of such places, and cannot part with his responsibility in this respect (*c*). London and Middlesex being under the same sheriffs (*d*), we find that Newgate was used as the common gaol for both counties from a very early period(*e*); and by charter of Edward VI., the civic authorities are empowered to apprehend felons, thieves, and other malefactors in Southwark, and commit them to this gaol, which was the ordinary place of confinement, not only for malefactors, but also for debtors, persons guilty of contempt in the city courts (*f*), and at one period for state offenders; and, by ancient custom, no criminal could be removed from thence to any other prison for any cause (*g*).

The inconvenience, however, of having the same place of confinement indiscriminately for all classes of offenders, was very early discovered. In 1282, the *Tun*, in Cornhill, was built as a prison for nightwalkers and others (*h*), with a pillory, and other instruments of punishment.

(*a*) Bacon's Abr. tit. Gaol, A.

(*b*) 2 Inst. 100.

(*c*) Stat. 14 Edw. III. st. 1, c.
10; 3 Inst. 91; 4 Co. Rep. 34.

(*d*) *Ante*, p. 135.

(*e*) Strype's Stow, lib. 1, p. 19.

(*f*) *Ante*, p. 81 and 198, note (*o*).

(*g*) Calth. Cust. of London, p.
119.

(*h*) Strype's Stow, lib. 2, p. 134.

About a century after (i), Ludgate was made a distinct prison for citizens of London, who were directed by act of common council (k) to be exclusively imprisoned there for debts, trespasses, accounts, and contempts, lodging and water being provided them *gratis*; and by ancient custom, it was established that if a citizen of London were committed to this prison, he was to be excused from the ignominy of irons, on finding sureties to be a true prisoner; and if the debt did not exceed £100, such citizens might have leave to go abroad into any place, under the surveillance of a keeper, with a *battoon*, as it was called, and return with him at night (l). A freeman of London, therefore, on being arrested in an action in either of the compters, might refuse to go to the Compter, and require immediately to be taken to Ludgate (m).

Bridewell Hospital, we have seen, was early used as a place of confinement for vagrants and sturdy beggars (n), as the best mode of providing for such characters. The chamberlain, also, in exercise of his jurisdiction over disputes between masters and apprentices, is by ancient custom invested with power, upon complaint of any notorious fault in the apprentice, to send one of his officers for such apprentice, and commit him to this hospital (o). The corporation, therefore, as we shall see hereafter, early furnished Bridewell as a regular house of correction (p), not only for the punishment of such offenders, but also for the far more laudable object of maintaining persons discharged from prison, before being let loose again upon the world. For these various purposes the institution is still preserved, and, therefore, unites within it the double character of a hospital and prison.

(i) Anno 1378. See Howell's *Londinopolis*, p. 4.

(k) Anno 1382, *id. ib.*

(l) See Strype's *Stow*, lib. 3, p. 175.

(m) *Id. ib.*; Appendix, p. 32;

Boh. Priv. Lond. 306, 456; Sir George Treby's argument on *quo warranto*, 30.

(n) *Ante*, p. 139.

(o) Priv. Lond. 338.

(p) See *post*, p. 245.

The sheriffs were in the habit of imprisoning in their compters (*q*) persons taken by the watch at night or by the serjeants-at-mace for debt. And it also became customary for the city justices to commit offenders there, though Lord Coke says this was illegal, the compters not being common gaols (*r*).

These several prisons were always under the control of the corporation of London, though the sheriffs and their officers acted therein as servants of the crown; for acts of common council were continually being made for reforming abuses in them, and effecting alterations rendered necessary by circumstances (*s*). The old Compter, in Bread Street, was removed in 1555 to Wood Street, owing to the oppressive conduct of the former keeper; and Ludgate was pulled down in 1760, and the prisoners were removed to a place in Bishopsgate Street bearing the former name: and by an act of parliament, passed in 1785 (*t*), the corporation were empowered to pull down also the old Poultry and Wood Street Compters, and erect the building at present known by the name of Giltspur Street Compter, and remove thither the prisoners belonging to all those prisons—an arrangement which has been still further improved upon by the building of the New Prison in Whitecross Street, erected under the authority of two subsequent statutes (*u*), for the exclusive reception of persons in custody of the sheriffs on civil process, both for London and Middlesex, and whether such prisoners would otherwise have gone to Newgate, the two compters, or Ludgate, but without prejudice to any rights, privileges or advantages previously attached to any particular prison. Prisoners in the custody of the sheriffs of London, not, however, to be

(*q*) See *ante*, p. 136.

(*r*) 9 Co. 119. See Roll's Abr. 806, citing Show. Rep. 162.

(*s*) See Hodges' Bye Laws, Index,

tit. Compters.

(*t*) 25 Geo. III. c. 97.

(*u*) 52 Geo. III. c. CCIX.; and 55 Geo. III. c. XCVIII.

chargeable with process directed to the sheriff of Middlesex, nor *vice versâ* (x).

Neither the sheriffs of London nor sheriff of Middlesex are chargeable with any process of detainer for debt, or other civil matter issuing against any prisoner on a charge of felony, or otherwise, than by civil process in their or his custody, without an express order of the court from which the same issues (y); and persons charged with detainer must, within forty-eight hours after acquittal from criminal process, be removed to Whitecross Street prison (z)—Newgate always to be exclusively appropriated to the confinement of felons and other criminals (a), or persons expressly committed there by a judge or commissioner of bankrupts (b). Giltspur Street Compter was directed to be divided, in such manner as the court of aldermen should think proper, into a prison for criminals and a house of correction for the city (c); the Compter to be henceforth called the *Giltspur Street Prison*, and the same, with the prisoners confined therein respectively, to be in the custody of the sheriffs of London, and be appropriated to the confinement of prisoners liable to be confined in the former two compters otherwise than by civil process (d). Persons apprehended upon charges or otherwise in the night time, or detained for further examination in the city, to be taken and sent or committed to the said last-mentioned prison (e).

The court of aldermen to fit up the house of correction and provide materials for work, and to have the management thereof, the keeping the prison clean, and the appointment of officers (f), and to make rules for the

(x) 55 Geo. III. c. XCVIII. s. 9. See *ante*, p. 136.

(y) 52 Geo. III. c. CCIX. s. 52.

(z) Sect. 53.

(a) Sect. 56.

(b) Sect. 58.

(c) Sections 59, 60.

(d) Sect. 62.

(e) Sect. 63.

(f) Sections 64 to 68.

Debtors' and Giltspur Street prisons, to appoint visitors, and rectify abuses (*g*).

The Compter being the place of confinement for night-walkers, it was formerly usual for the constable to imprison there, persons under their custody at night, even on very trifling charges (*h*); but by the different police acts it is now, we have seen (*i*), expressly provided that all persons apprehended without warrant (except when for the mere purpose of ascertaining their name and address), must be taken to the nearest station house for safe custody, until the complaint is heard, or bail be given.

There are various prisons erected in the rest of the metropolis which it would be out of the province of the present work to describe, being either attached to the superior courts of law or to the neighbouring counties, and wholly unconnected with the City of London. It is, however, provided by the Central Criminal Court Act(*k*), that for the more convenient distribution of prisoners, as well before trial as after, and also for rendering more effectual the punishment of imprisonment, the queen in council may from time to time order and direct in what gaol, house of correction, or other prison, within the limits of the act (*l*), persons charged with or convicted of offences committed, or alleged to have been committed, within such limits, shall be imprisoned or kept in custody, at the expense, nevertheless, of the city, county, or place in which the offence of the prisoner was committed or alleged, the rate of allowance to be settled by order in council: provided nevertheless, that the county of Middlesex, city of Westminster, and liberty of the Tower, are not to be liable to any charge for the support and maintenance of any prisoner charged with any offence therein respectively, who is committed to Newgate.

(*g*) Sections 78 to 84.

(*h*) See *Wright v. Lawes*, 4 Esp. N. P. C. p. 82.

(*i*) *Ante*, p. 159.

(*k*) 4 & 5 Will. IV. c. 36, s. 5.

(*l*) See *ante*, p. 210.

The Penitentiary at Milbank is declared to be one of the prisons under the act—s. 6; and prisoners under sentence, whether within or without the limits of the act, may, after a medical examination, be removed to such Penitentiary—s. 7 (m); and all prisoners confined therein are subject to the general penitentiary regulations—s. 8 (n).

If no order be made, persons convicted at the Central Criminal Court may be committed to the ordinary county gaol, house of correction, or other prison previously liable to receive them, or to Newgate, until discharged by law or in pursuance of sentence; and in the latter case the judgment of the court may be executed by the sheriffs of London, whether the offence were committed in London or not.—s. 9.

Until the making of such order, persons in Essex or Kent, charged with offences cognizable under the act, may be committed to Newgate, or in Surrey to Horse-monger Lane.—s. 10. The court of aldermen to contract with the justices of Essex, Kent, and Surrey, for support of their prisoners in Newgate; and if they cannot agree, the amount to be settled by an order of the Central Criminal Court.—s. 14.

The Queen's Prison.—By the 5 Vict. sess. 2, c. 22, entitled, “An Act for consolidating the *Queen's Bench, Fleet,* and *Marshalsea* Prisons, and for regulating the *Queen's Prison*,” the former Queen's Bench Prison is denominated the Queen's Prison, and is declared to be the only prison for all debtors, bankrupts, or other persons who previously might lawfully have been imprisoned in any of the above prisons; and no person can henceforth be committed from any of the courts of Queen's Bench, Common Pleas, Exchequer, and Chancery, Marshalsea, Palace Court, Admiralty, or courts-martial, to the Fleet or Marshalsea Prisons; the persons imprisoned in the Queen's Prison to be there in the cus-

(m) And 5 & 6 Will. IV. c. 38, s. 13.

(n) And *id. ib.* s. 14.

tody of the marshal or keeper of the Queen's Prison, from whichever of the said courts committed : all securities taken from any officer of the Queen's Bench Prison for performance of his duty respecting the prisoners previously confined in the Queen's Prison enuring for the like purposes as to the new prison : and all rules, orders, and enactments previously in force as to the former, to apply to the latter—s. 1 ; the removal to take place under the warrant of the Lord Chief Justice—s. 2.

Removal of Records, &c.—All records, books and papers in the custody of any officer of the Fleet Prison, relating to the business of the said prison, to be delivered to the marshal of the Queen's Prison, and the offices of warden of the Fleet, deputy warden, clerk of the papers, and all other offices of the Fleet Prison, to be abolished ; and all records, books, and papers in the custody of any officer of the prison of the *Marshalsea* and *Palace Court* relating to the business of the said prison to be delivered to the marshal of the Queen's Prison, and the offices of keeper, chaplain, surgeon, and all other offices of the prison of the said *Marshalsea* and *Palace Court* to be abolished.—s. 3.

The former Prisons.—Upon the abolition of the office of warden of the Fleet Prison, the said prison so to be discontinued with all its appurtenances, and upon the abolition of the office of keeper of the prison of the *Marshalsea*, and of the Court of the Queen's Palace of Westminster, the last mentioned prison so to be discontinued, with all its appurtenances, to vest absolutely in her Majesty, her heirs, and successors, to be within the ordering and survey of the Court of Exchequer, and under the management of the Commissioners of Woods and Forests, and within the provisions of all acts passed respecting any parts of the possessions and land revenues of the Crown within the ordering and survey of the said Court of Exchequer.—s. 6. Where, by any act now in force, any thing is provided to be done with respect to the Fleet

or Marshalsea Prison, or the prisoners therein, or the warden or keeper of either of the said prisons, the said acts, unless so far as any such provision is repealed or altered by this act, to continue in force and be taken to apply to the Queen's Prison and to the prisoners therein, and to the marshal or keeper of the Queen's Prison respectively.—s. 7.

Relief to Poor Prisoners.—The various sums provided by the 53 Geo. III. c. 113, to be paid to the several treasurers of counties or for the benefit of poor prisoners, and also any balance of any such sums at that time remaining unappropriated in the hands of the chamberlain of the city of London, or of the treasurer of the county of Surrey, to be by them paid to the marshal or keeper of the *Queen's Prison*, to be by him applied under the direction of one of her Majesty's principal secretaries of state, for the relief of the prisoners confined in the *Queen's Prison*, the receipts of the said marshal or keeper to be sufficient discharges for the same; and all provisions of the last recited act respecting monies paid or which ought to be paid to the treasurer of the county of Surrey, or to the persons entitled to be relieved thereby, to apply to the monies so paid or to be paid to the said marshal or keeper by virtue of this act, and to the prisoners confined in the *Queen's Prison*, and all the surplus and residue (if any) of the said monies to be paid as provided by the last mentioned act to the treasurer for the time being of the Royal Hospital of *Bethlehem*, for the relief and benefit of the said hospital.—s. 8.

So much of the last recited act as provides that no prisoner who shall be charged in execution for debt shall be relieved by virtue of that act after the first day of the term next following the time when he or she should be charged in execution, and that the relief to be given to the said prisoners shall be given under the direction of any justice of the peace for the county of Surrey, and that the justices of the peace for the county of Surrey,

or the major part of them, at their general quarter sessions, shall make any orders, rules, or regulations respecting the monies to be collected under the last recited act, and that the treasurer of the county of Surrey, or any person appointed to receive and distribute any of the said monies, shall render to the said justices any account of their receipts and disbursements, under the last recited act, shall be repealed, and the marshal or keeper of the Queen's Prison shall account for the receipts and disbursements of the said monies in such manner as the Commissioners of her Majesty's Treasury shall direct.—s. 9.

Charities.—The warden of the *Fleet Prison* and keeper of the prison of the *Marshalsea* and Court of the *Queen's Palace of Westminster*, shall severally make out and deliver to the marshal of the *Queen's Prison* a true list of all charitable gifts and bequests heretofore made for the relief of poor prisoners, or for the discharge of poor debtors in the *Fleet* and *Marshalsea Prisons* respectively; and all the said gifts and bequests, and also all charitable gifts and bequests heretofore made for the relief of poor prisoners, or for the discharge of poor debtors, in the *King's Bench Prison*, shall be applied after the removal of all the prisoners in the *Fleet* and *Marshalsea Prisons* to the *Queen's Prison*, for the relief of poor prisoners or discharge of poor debtors (as the case may be) in the *Queen's Prison*, as well of those who but for the passing of this act would have been imprisoned in the *Queen's Bench Prison*, as of those who but for the passing of this act would have been imprisoned in the *Fleet Prison* or *Marshalsea Prison* indiscriminately, according to their wants, at the discretion of the persons lawfully administering such charitable gifts and bequests respectively.—s. 10.

Gaol Fees, &c.—After the passing of this act, all fees and gratuities paid or payable by any prisoners on the entrance, commitment to continue in, or discharge from the *Queen's Prison*, except as hereinafter provided, shall

absolutely cease, and any marshal or keeper or other officer of the Queen's Prison, who after the passing of this act shall exact from any prisoner any fee or gratuity for or on account of the entrance, commitment, or discharge of such prisoner, or in the name of chamber rent, or for any other purpose whatever, except such as shall from time to time be sanctioned by the Commissioners of her Majesty's Treasury, for any work and labour actually performed for the use and benefit of any prisoner, or who shall detain any prisoner in custody for non-payment of any fee, rent, or gratuity, shall be rendered incapable of holding his office, be guilty of a misdemeanor, and be punished by fine and imprisonment.—s. 11.

“ *The Rules of the Queen's Bench Prison,*” and “ *The Rules of the Fleet Prison,*” and “ *Day Rules.*”—It shall not be lawful for the marshal or keeper of the Queen's Prison to grant any *day rule*, or to grant the *liberty of the rules* to any person, except for the purpose of continuing the liberty of the rules of the *Queen's Bench Prison* for such time as the marshal shall think fit, not more than twelve calendar months after the passing of this act, to those persons who shall be in the enjoyment of the liberty of the rules of the *Queen's Bench* or *Fleet Prison* at the time of the passing of this act; and that all persons in the custody of the marshal or keeper to whom the liberty of the rules of one of the said prisons shall not have been granted before the passing of this act, and also those persons to whom such liberty shall have been granted before the passing of this act, after the next determination of such liberty, shall be confined within the walls of the *Queen's Prison*, and that it shall be deemed an escape if any such prisoner be suffered to go beyond the walls of the prison, except as hereinafter provided.—s. 12.

If the marshal of the Queen's Prison shall think fit to grant the liberty of the rules of the *Queen's Bench Prison* to any person who at the time of the passing of this act shall be in the enjoyment of the liberty of the

rules of the Fleet Prison, and shall be removed into the custody of the said marshal under this act, the said marshal shall not exact any fee from such person for granting such liberty; and the securities to be entered into and executed in favour of the said marshal, for assurance that such person will not escape out of the custody of the said marshal, shall not be liable to any stamp duty.—
s. 13.

Lunatic Prisoners.—That if any prisoner confined in the *Queen's Prison* shall become or be found to be of unsound mind during his or her imprisonment, and shall be so reported by the marshal or keeper thereof to one of her Majesty's principal secretaries of state, it shall be lawful for such secretary of state, by warrant under his hand directed to the said marshal or keeper, upon the certificate of two physicians or surgeons that such prisoner is of unsound mind, to order that such prisoner shall be forthwith removed to the Royal Hospital of Bethlehem, and the president, treasurer, and governors of Bethlehem Hospital shall be bound to receive such prisoner, and him or her safely to keep, until a warrant of the secretary of state shall be directed to them for re-delivery of such prisoner into the custody of the marshal or keeper of the *Queen's Prison* as herein-after provided, and such removal shall not be construed to be an escape; and every prisoner so removed shall remain under confinement in Bethlehem Hospital until it shall be duly certified to one of her Majesty's principal secretaries of state, by two physicians or surgeons that such prisoner hath become of sound mind, whereupon the secretary of state shall issue his warrant to the president, treasurer, and governors of Bethlehem Hospital, ordering that such prisoner be re-delivered into the custody of the marshal or keeper of the *Queen's Prison*, for the purpose of being remanded to the *Queen's Prison*, and neither the marshal or keeper of the *Queen's Prison*, nor the president, treasurer, and governors of Bethlehem Hospital, shall be answerable for

any escape which such prisoner may make out of Bethlehem Hospital.—s. 14.

Removal of Prisoners in Cases of Contagious Diseases or Emergency.—The prisoners or any of them may be removed on account of any contagious or infectious disease in the prison, or upon any other emergency, by a warrant under the hand of a secretary of state, directed to the marshal or keeper of the *Queen's Prison*, in the custody of the said marshal or keeper, to such other place of imprisonment as the secretary of state shall direct, such place having been first reported by the marshal or keeper of the *Queen's Prison* to the secretary of state as a safe place of custody, and fit for the reception of such prisoners; and when such disease shall have ceased, or the purposes for which the prisoners shall have been removed shall have been fulfilled, it shall be lawful for the secretary of state, by a like warrant, to order that such prisoners be removed back to the *Queen's Prison*; and any place to which any prisoners shall be removed under any such warrant shall be deemed, during their imprisonment therein, to be a part of the *Queen's Prison*, and no such removal of any prisoner shall be construed to be an escape.—s. 15.

Rules for the Government of the Queen's Prison to be made by the Secretary of State (o).—The rules for the

(o) Rules for the Government of the *Queen's Prison*, in pursuance of an Act for consolidating the *Queen's Bench, Fleet, and Marshalsea Prisons*, and for regulating the *Queen's Prison*.

THE MARSHAL OR KEEPER.

1. He shall reside in the prison, and shall not be absent from the prison for a single night without recording the same in his journal. When absent from the prison for more than one night, he shall with-

out delay notify to the secretary of state the period and cause of his absence.

2. He shall be supplied with copies of all acts of parliament in force which relate to any part of his duties, and with a copy of the rules in force in the prison. He shall see that the other officers and servants of the prison be supplied with copies of such portions of the acts and of the rules as relate to the several duties required of them. He shall acquaint himself with such acts and with the

government and regulation of the Queen's Prison shall be made from time to time by one of her Majesty's prin-

prison rules, and shall strictly adhere to them himself, and see that they are strictly observed by others. He shall observe the conduct of his subordinate officers, and enforce on each of them the due execution of their duties, restricting them entirely to the performance of their public duties, and not permitting any of them to be employed in any menial or private capacity either for himself or any other officer of the prison, or for any prisoner; but he may license or authorize such persons as he may think proper, not being officers of the prison, to come in between the hours of unlocking in the morning and locking at night, to act as servants to such of the prisoners as wish to employ them.

3. He shall keep a journal for recording all punishments inflicted by his authority, and the cause thereof; and he shall see that no punishments for breaches of the prison regulations be awarded except by himself. He shall also record therein all occurrences of importance within the prison, particularly such as relate to the health, discipline, or escape or attempt at escape of any prisoner, or to the infringement of any of the prison rules; such journal to be laid before the secretary of state at Lady Day and Michaelmas, and oftener if required.

4. He shall see that no money, food, perquisite, or gratuity of any kind, under the name of garnish or under any name or pretence whatever, be taken or received by any person from any prisoner, or from any person on his behalf or account,

on his entrance into the prison or at any other time; that no officer of the prison, nor any person in trust for or employed by him, have any benefit or advantage from the supply, loan, or letting of any article or dealing with any prisoner; that no officer directly or indirectly have any interest in any contract or agreement for the supply of the prison; and that no officer receive at any time any money, fee, or gratuity of any kind on account of the admission of any visitor to the prison or to the prisoners.

5. He shall place in Class 1 any debtor adjudged to be discharged at some future period on the ground of fraud; and any debtor who does not, according to the act 1 & 2 Vict. c. 110, file a schedule of his property.

6. He shall, in default of any precise direction of the persons lawfully administering charitable gifts and bequests, at his discretion, distribute such charitable gifts and bequests amongst the most distressed and deserving prisoners. He shall keep a book, in which shall be entered the mode in which such gifts and bequests are from time to time disposed of, and the names of the poor prisoners and debtors who are benefited by the same; such book to be laid before the secretary of state at Lady Day and Michaelmas, and oftener if required; and he shall himself make the selection of the prisoners who are to receive such gifts and bequests, and shall himself superintend their distribution.

7. He shall see that a table, con-

cipal secretaries of state, who shall subscribe a certificate that such rules are fit to be enforced ; and all rules so

taining a full and accurate statement of all charitable gifts and bequests for the benefit of the prisoners, is suspended in some open place to which the prisoners have access.

8. He shall see that debtors of Class 3, who, under the 53 Geo. III. c. 113, make oath that they are not worth 10*l.*, during the first six months of their imprisonment be allowed 5*s.* per week, and during the second six months 3*s.* 6*d.* per week, at the expiration of which period the allowance shall cease altogether; that debtors of Class 1, who are adjudged to be discharged at some future period on the ground of fraud, or who do not file a schedule of their property, who in like manner make oath that they are not worth 10*l.*, be allowed 3*s.* 6*d.* per week during the first twelve months of their imprisonment, at which time the allowance shall cease altogether, except in the case of those poor debtors who are remanded for a longer term, whose allowance of 3*s.* 6*d.* per week may continue until the term of imprisonment awarded is expired ; and that prisoners of Classes 4, 5, and 6, who in like manner make oath that they are not worth 10*l.*, be allowed 3*s.* 6*d.* per week ; but debtors who are in a condition to leave the prison, if they think proper to avail themselves of the legal means of so doing, are to receive no weekly allowance. He shall keep a book for the names of all debtors unable to maintain themselves who shall receive an allowance from the prison under this rule, such book to be laid before the

secretary of state at Lady Day and Michaelmas, or oftener if required.

9. He shall, upon the written recommendation of the surgeon, supply to prisoners who do not maintain themselves such an additional allowance as may be necessary for the support of health, inserting each particular case in his journal.

10. He shall see that no tap be kept in the prison, and that no spirituous liquors of any kind be admitted for the use of any prisoners therein under any pretence whatever, unless by a written order of the surgeon, specifying the quantity and for whose use ; that no wine, beer, cider, or other fermented liquors be admitted for the use of any prisoners, except in such quantities, in such manner, and at such times as shall be allowed by the rules hereinafter provided ; that no shop for the sale of provisions or other articles be kept within the prison, except the public bakehouse for the sale of bread alone.

11. He may license or authorize such persons as he may think proper (not being prisoners or officers of the prison) to come in daily and supply the prisoners with wine, beer, provisions, or other necessaries, at such times and in such manner as shall be hereinafter provided. A notice board shall be affixed in some conspicuous place near the entrance gate, cautioning persons from bringing in spirits or other prohibited articles into the prison, and of their being liable to penalties for so doing.

12. He shall see that gaming of

made shall be binding upon the marshal or keeper and other officers of the prison, and upon the prisoners con-

every kind is prohibited in the prison, and shall seize all dice, cards, or other instruments of gaming.

13. He shall visit and inspect every room, yard, and division of the prison used or intended to be used by the prisoners, and see every prisoner once at least each week; and when visiting the division for females, he shall be attended by the matron or some other female officer; and in default of such weekly visits and inspections, he shall state in his journal how far he has omitted them, and the cause of any such omission. At each inspection he shall inquire into the number of persons lodging in each room, and he shall enter the result of such examinations in his journal; and in case the rooms appropriated to one class of prisoners be insufficient to allow each prisoner to have a room to himself, he may, with the consent of the prisoner, use such spare rooms for prisoners of another class.

14. He shall take every precaution necessary for preventing escape, and give orders for a daily inspection of every room and yard of the prison.

15. He shall see that the locks and keys of the division for females be different from those of the division for the males.

16. He shall attend divine service in the prison chapel whenever it is performed; and in case of his omitting to do so, shall insert the omission and cause thereof in his journal. He shall also see that the subordinate officers regularly attend, unless prevented by some duty.

17. He shall see that proper means are taken for the regular and sufficient cleansing of the prison; and that the walls and ceilings throughout the prison are scraped and white-washed at stated seasons. He shall see that prisoners labouring under infectious diseases are separated from other prisoners, and that the rooms occupied by such prisoners are disinfected and lime-washed. He shall also provide that any infected or suspected linen, apparel, or bedding be disinfected, or, if necessary, be destroyed; in which case he shall supply other linen, bedding, or apparel.

18. He shall direct that prisoners make their beds, or cause them to be made, every morning; and clean their rooms, or cause them to be cleaned, every morning.

19. He shall, upon the death of any prisoner, give immediate notice to a relation or friend of the prisoner, if known, and to the coroner of the district, in order that he may inquire according to law how such prisoner came by his death.

20. He shall take care that the prison gates be unlocked at eight o'clock in the morning, and locked at nine o'clock every evening, except in term time, and then at ten o'clock.

21. He, or in his absence the deputy marshal, or clerk of the papers appointed by him for that purpose, may inspect, and, if he deem it necessary, withhold any letter or parcel to or from any prisoner, when he has reason to believe that it relates to an escape or attempt at escape, or any breach of the rules of the prison;

fined therein; and all such rules shall be laid before parliament within six weeks after such rules shall be

and whenever he shall open or withhold a letter or parcel, he shall mark it with his initials, and record the fact in his journal.

22. He may demand the name and address of any visitor, and may search or cause to be searched male visitors, when he deems such search necessary, for preventing the introduction of spirits or other prohibited articles, such search not to be in the presence of any prisoner; and he may, in a like manner and for the same purpose, direct the matron, or in her presence some other female officer, to search female visitors; and in the event of their refusing to be searched, may deny them admission; and if he shall know any cause why a visitor should not see a prisoner, he may forbid his admission, and state the fact in his journal.

23. He shall keep copies of all official letters written by him, and shall enter the same in his letter-book on the day they are written or the day after.

24. He shall give to every male prisoner, on admission, a printed copy of such of the rules as relate to the conduct and treatment of prisoners; and he shall read or cause to be read such rules to such prisoners as cannot read.

25. He shall direct that the prisoners are placed on admission in the reception rooms, where they shall be examined, in order to ascertain that they have no dangerous weapons or articles serviceable for escape, no spirituous liquors, or other prohibited things; after which examina-

tion he shall place them in the class to which they belong, and assign to them the room or part of the room which they are to occupy; such examination to be in no instance conducted in the presence of another prisoner.

26. He shall keep a book, wherein shall be regularly entered from time to time the number of prisoners belonging to each class, and the number of prisoners sleeping in each room; such book to be laid before the secretary of state at Lady Day and Michaelmas, and oftener if required. No more than one prisoner shall be suffered to lodge in one room, until the number of prisoners belonging to any class shall exceed the number of rooms appropriated to that class, nor more than two in a room until the number of the class shall be more than double the number of rooms, and so on; and no prisoner shall pull down any partition or fixture, or make any alteration in the room appropriated to his use, without the consent of the marshal.

27. He shall see that no persons, except the prisoners or officers of the prison, and the families and servants of such officers as are provided with apartments in the prison, be permitted to lodge or continue during the night in the prison, except in cases of illness or infirmity, and then only by the written order of the marshal and surgeon; such orders to contain the grounds of the permission, to be filed and entered in the marshal's journal.

28. He shall direct that relations and friends be admitted to the pri-

certified, or if parliament be not then sitting, within six weeks after the next meeting of parliament; and so

soners between the hours of nine in the morning and six in the evening, except during divine service, or unless he shall have good reason for believing that such admission may lead to a breach of discipline or good order in the prison; and in case of the exclusion of any such person, he shall make an entry thereof in his journal. Legal advisers, however, shall be admitted to see prisoners at any reasonable hour, such legal adviser being a certificated attorney or solicitor, or his authorized clerk.

29. He shall strictly charge the officers to attend to the complaints or applications of the prisoners, and forthwith report the same to him. If a prisoner complain of illness, he shall report the case without delay to the surgeon.

30. He shall see that, in addition to the county money, necessary fuel, bedding, furniture, and bedroom utensils be supplied to any prisoner who is unable to procure such articles.

31. He shall see that prisoners who do not maintain themselves have, if they desire it, their provisions cooked in the public kitchen, without any charge for the same, under such regulations as he may deem necessary for convenience and order.

32. He shall permit prisoners to work at their respective callings and trades, provided their employment does not interfere with the good government of the prison.

33. If any prisoner shall escape or attempt to escape, or shall be aiding, abetting, or assisting any prisoner to escape, he may confine such prisoner

in one of the strong rooms of the said prison for such time as he shall think necessary for safe custody.

34. If any prisoner shall procure to be brought into the prison for sale, or keep or have therein for sale, any victuals, wine, beer, ale, or any spirituous or other liquors of any kind whatsoever, or shall procure to be brought into the said prison, or shall have either in his own room or in any other room or place in the said prison, any spirituous liquors, or shall injure or assault any of the officers of the prison, or any other prisoner, or any other person in the said prison, or shall behave in a disorderly manner or otherwise contrary to the rules and orders for the good government of the prison, then the marshal may confine such prisoner in any strong room for any time not exceeding seven days for the first offence, and not exceeding one calendar month for the second or more frequently repeated offence, provided that such confinement do not exceed the period when such prisoners would otherwise be discharged.

35. He shall, whenever he orders a prisoner to be confined in any of the strong rooms, record the same in his journal, and the cause thereof, and the length of time such prisoner is ordered to be so confined; and in case such prisoner be liberated before such time, he shall also enter such liberation in his journal.

36. If any prisoner be of a religious persuasion differing from that of the Established Church, the marshal shall allow a minister of that persuasion,

much of any act as relates to the making of rules for the said prison by any court in Westminster Hall shall be

at the request of such prisoner, to visit him at all reasonable times.

DEPUTY MARSHAL.

37. He shall reside in the prison. He shall not leave the prison during the absence of the marshal. When the marshal and deputy marshal are both absent, the charge of the prison shall devolve upon the clerk of the papers or chief turnkey.

38. He shall on all occasions assist the marshal in maintaining order, and during the illness or absence of the marshal shall have charge of the prison. He shall conform to the rules laid down for the marshal. He shall see that the marshal's orders are strictly executed. He shall diligently observe the behaviour of all subordinate officers and servants, as well as that of the prisoners. He shall see that they adhere to the rules, and shall without delay report to the marshal any neglect or misconduct that may come to his knowledge.

39. He shall at least twice in every week inspect every part of the prison, visiting every room occupied by prisoners and seeing every prisoner; and he shall report to the marshal any irregularity he may observe.

THE MATRON.

40. The matron shall reside in the prison and be under the directions of the marshal, and shall not be absent from the prison without his leave. She shall have the care and superintendence of the whole female de-

partment, and enforce upon the female prisoners the observance of the prison rules. With respect to her general conduct, she shall conform to the rules laid down for that of the marshal, as far as they can be applied to the treatment and care of female prisoners.

41. She, or, in her absence, some other female officer, shall attend the marshal whenever he visits the female prisoners. She shall see that no male officer enters the females' division unless accompanied by herself or some other female officer.

42. She shall keep a journal for recording occurrences of importance, and any acts of misconduct, insubordination, or breaches of the prison rules within her department, which she shall forthwith report to the marshal. Such journal shall be laid before the marshal weekly.

43. She shall attend divine service whenever it is performed in the prison chapel, and in case of her omitting to do so shall insert the omission and cause thereof in her journal.

44. She, or some other female officer in her presence, shall examine every female prisoner on admission, when she deems such search necessary for preventing the introduction of spirituous liquors or other prohibited articles; and whenever she thinks it necessary for the like purpose, or when directed by the marshal, she shall search, or in her presence cause to be searched, any female visitor to the prisoners; such

repealed : Provided always, that the judges of her Majesty's Courts of Queen's Bench, Exchequer, and Com-

examination to be in the presence of females only, and not of any prisoner.

45. She shall give to every female prisoner on admission a printed copy of such of the rules as relate to the conduct and treatment of prisoners, and she shall read or cause to be read such rules to any prisoner who cannot read.

SUBORDINATE OFFICERS.

46. They shall strictly conform to the rules laid down for their conduct, obey the orders of the marshal, and assist him in maintaining order in the prison.

47. Each subordinate officer shall be provided with a book in which shall be inserted the orders regulating the discipline of the prison which he may from time to time receive from the marshal, and all reports relating to the discipline of the prison and the conduct of the prisoners made by him to the marshal.

48. They shall forthwith report to the marshal the name of any prisoner who may desire to see him or the chaplain or surgeon.

49. They shall not be absent from the prison without the permission of the marshal.

PORTER OR GATE-KEEPER.

50. He shall lock and unlock the gates of the prison at such hour, night and morning, as the marshal shall direct.

51. He shall endeavour by every means in his power to prevent the

embezzlement of any of the prison property, or the admission of spirituous liquors or of other prohibited articles, for which purpose he may examine all articles carried in or out of the prison; and he may stop any person suspected of bringing in spirits or other prohibited articles, or of carrying out any property belonging to the prison, giving immediate notice thereof to the marshal.

CHAPLAIN.

52. He shall, on every Sunday, Christmas Day, and Good Friday, and on public fast and thanksgiving days, perform the appointed morning and evening services of the Church of England, and preach a sermon at each service, such services to be between the hours of nine in the morning and five in the afternoon. In case of unavoidable absence he shall record the fact and cause thereof in his journal, and shall appoint a substitute, informing the marshal of the appointment, and inserting the name and residence of the substitute in his journal.

53. He shall administer the sacrament of the Lord's Supper at least four times in the year to such officers and prisoners as shall be desirous to receive the same.

54. He shall frequently attend at the prison during the week, and shall visit the infirmaries and sick; and shall attend at all reasonable times such prisoners as are willing or desirous to see him.

55. He shall keep a journal for

mon Pleas, and of her Majesty's High Courts of Chancery and Admiralty, shall have and exercise the same powers

entering the times of his attendance in the performance of his duties and all occurrences of importance; such journal to be laid before the secretary of state at Lady Day and Michaelmas, and oftener if required.

SURGEON.

56. He shall visit the prison at least twice a week, and oftener if necessary. He shall keep a journal, in which shall be entered the data of every attendance in the performance of his duty, and any occurrence of importance connected with his department; such journal to be laid before the secretary of state at Lady Day and Michaelmas, and oftener if required.

57. He shall visit the sick prisoners under his care at least once every day, and oftener if necessary, and shall attend immediately on receiving notice of the illness of any prisoner.

58. He shall twice in each week, and oftener if necessary, see every prisoner in the first, fourth, fifth, and sixth classes, and every other prisoner who does not maintain himself; and he shall recommend to the marshal the supply of such additional allowance to those who do not maintain themselves as may seem necessary to him in any particular case on the ground of health, inserting each case and the particulars thereof in his journal.

59. He shall without delay signify to the marshal, in writing, such directions as he may deem necessary

for separating prisoners having infectious or contagious diseases, and for disinfecting and lime-washing any apartments occupied by such prisoners.

60. He shall remark in his journal and immediately inform the marshal of any neglect of cleanliness in the prison, want of drainage, or of warmth or ventilation, or any other cause which may affect the health of the prisoners.

PRISONERS.

FIRST CLASS ;

vis.

Debtors adjudged to be discharged at some future Period, and Debtors who do not, according to the Act 1 & 2 Vict. c. 110, file a Schedule of their Property.

61. They shall be strictly confined to the division, rooms, and yard appropriated to them, and shall not be permitted to hold any communication with the prisoners of any other class.

62. They shall be divided into two divisions; viz. those who maintain themselves, and those who do not. The prisoners who do not receive any allowance from the prison may procure for themselves or receive from their friends, at proper hours to be determined by the marshal, a reasonable quantity of plain food, and they may purchase for themselves or receive from their friends, in each period of twenty-four hours, wine

with respect to ordering the marshal or keeper of the Queen's Prison to take into his custody any person com-

not exceeding half a pint, or malt liquor not exceeding one pint, except in cases in which the surgeon shall permit a larger allowance on the ground of health, such permission and the grounds thereof to be entered in his journal. They may also procure for themselves or receive any bedding, clothing, or other necessaries. All the articles referred to in this rule shall be subject to inspection, and to such restrictions as the marshal may deem proper, in order to prevent extravagance and luxury in the prison. No part of such food, wine, malt liquor, or other articles shall be given, sold to, or exchanged with any other prisoner; and any prisoner transgressing this rule shall lose the privilege of receiving or purchasing any wine or malt liquor for such a time as the marshal shall direct.

63. The prisoners of this class who shall, under the provisions of the 53 Geo. III. c. 113, make oath that they are not worth 10*l.*, may receive from the marshal 3*s.* 6*d.* per week during the first twelve months of their imprisonment, at which time the allowance shall cease altogether, except in the case of those poor debtors who are remanded for a longer term, whose allowance of 3*s.* 6*d.* per week may continue until the term for which they shall have been remanded is expired; and they may procure for themselves or receive from their friends at proper hours a reasonable quantity of plain food and malt liquor, not exceeding

one pint in each twenty-four hours, and any clothing, bedding, and other necessaries, subject to the same restrictions as are expressed in the foregoing rule.

SECOND CLASS;

viz.

Debtors who do not maintain themselves, and are not included in the First Class.

64. Debtors not included in the first class, who, under the provisions of the 53 Geo. III. c. 113, shall make oath that they are not worth 10*l.*, may receive from the marshal 5*s.* per week during the first six months of their imprisonment, and 3*s.* 6*d.* per week during the second six months, at the expiration of which period the allowance shall cease altogether; and they may procure for themselves or receive from their friends at proper hours a reasonable quantity of plain food and malt liquor, not exceeding one quart in each twenty-four hours, and any clothing, bedding, and other necessaries, subject to the same restrictions as are expressed in rule 62.

THIRD CLASS;

viz.

Debtors who do maintain themselves, and are not included in the First Class.

65. Debtors not included in the first class, who do not receive any allowance from the marshal, may

mitted by them respectively, or to bring before them respectively any prisoner in his custody, which the said

procure for themselves or receive from their friends at proper hours a reasonable quantity of plain food and wine, not exceeding one pint, or malt liquor not exceeding one quart, in each twenty-four hours, and any bedding, clothing, or other necessities, subject to the same restrictions as are expressed in Rule 62.

FOURTH CLASS ;

viz.

Prisoners committed for Libel.

FIRST DIVISION.

66. No prisoner shall be placed in this division except by order of the judge or court before whom he is tried.

67. If not receiving any allowance from the marshal they may maintain themselves, and shall be under the same regulations as debtors of the third class.

68. If under the provisions of the 53 Geo. III. c. 113, they shall make oath that they are not worth 10*l.*, they shall be under the same regulations as debtors of the second class.

SECOND DIVISION.

69. The prisoners, not being placed in the first division by order of the judge or court before whom they are tried, shall be placed in the division and yard appropriated to them.

70. They shall be under the same regulations as debtors of the first class.

FIFTH CLASS ;

viz.

Prisoners committed for Assault.

FIRST DIVISION.

71. The prisoners of this class shall be under the same regulations as prisoners of the fourth class, first division.

SECOND DIVISION.

72. Prisoners of this class shall be under the same regulations as prisoners of the fourth class, second division.

SIXTH CLASS ;

viz.

Prisoners committed by Courts-martial.

73. Prisoners of this class are to be removed according to the act 5 & 6 Vict. c. 98, ss. 27, 28, 29.

SEVENTH CLASS ;

viz.

Prisoners not included in any of the foregoing Classes.

74. If any such case occurs, the marshal shall place the prisoner under the regulations of the class which shall appear in his judgment most appropriate to the case and circumstances of the prisoner, immediately reporting the case to the secretary of state.

Approved,

J. R. G. GRAHAM.

*Home Office,
March 7th, 1843.*

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judges now have with respect to the several keepers of the prisons now belonging to the said courts, or any of them.—s. 16.

Classification of Prisoners.—In the *Queen's Prison* the male prisoners shall be separated from the female prisoners, so as to prevent all communication between them, and the prisoners of each sex shall be divided into the following classes ; that is to say,

1. Debtors remanded by the Commissioners of the Court for the Relief of Insolvent Debtors, on the ground of fraud, or for refusing to file a schedule of their property :
2. Debtors who do not maintain themselves, and are not included in the first class :
3. Debtors who do maintain themselves, and are not included in the first class :
4. Prisoners committed for libel :
5. Prisoners committed for assault :
6. Prisoners committed by courts-martial :
7. Prisoners not included in any one of the foregoing classes :

And it shall be lawful for the secretary of state to make separate rules for each class of prisoners, and that, as far as the construction of the prison will allow thereof, the prisoners of each class shall be separated from each other, and especially the debtors from the prisoners confined for other causes than for debt.—s. 17.

Regulation as to Supply of Food, Liquor, and Necessaries.—No prisoner in the *Queen's Prison* shall be allowed to send for or to have any beer, ale, victuals, or other food, or to send for, have, or use any bedding, linen, or other things, except such as shall be allowed to be brought by them respectively under such rules, to be made in the manner directed by this act, as may be reasonable and expedient to prevent extravagance and luxury, and for

enforcing due order and discipline within the prison.—
s. 18.

Inquests within the Prison.—All inquests upon the body of any person dying within the Queen's Prison, or the rules of the Queen's Bench Prison, shall be holden after the passing of this act before the coroner of the city of London, in like manner as any inquests holden within the Borough of Southwark.—s. 19.

Clerk of the Papers to take Affidavits.—The clerk of the papers of the Queen's Prison shall be empowered to take the affidavits of prisoners within the said prison on any proceeding in any court of law or equity in like manner as he is now empowered to take the affidavits of prisoners in the Queen's Bench Prison in any proceeding in the Court of Queen's Bench ; and for taking every such affidavit the clerk of the papers shall be entitled to have a fee of one shilling, and no more.—s. 20.

The remaining sections relate to the repair, &c. of the prison.

CHAPTER XV.

THE MAINTENANCE AND RELIEF OF THE POOR AND
SICK IN LONDON.

THE maintenance of the poor was, in London, as in other places, during the supremacy of the Roman church, always an ecclesiastical duty, and amply provided for from the immense estates with which the numerous religious houses in and about the metropolis were endowed. As we shall see, when we come to speak of the subject of tithes, a further collection was made for this purpose in the parish church, for the disposal of the officiating priest (*a*).

Some of these religious houses were endowed with funds for the express purpose of relieving the indigent. Thus the hospital of St. Bartholomew, in West Smithfield, was founded, between 1123 and 1133, for the reception of poor diseased persons till they got well, for pregnant women until delivered, and for the maintenance of the children born there until the age of seven, if their mothers died in the hospital (*b*).

On the general suppression of the monasteries, the distress of the lower orders in London was so much felt, that in the year 1538, the corporation addressed a petition to Henry VIII. praying that "the mayor and his brethren, or such other as should stand most in his highness' favour, should and might from thenceforth have the order, rule, disposition, and governance of the hospitals or spitals commonly called St. Mary's Spital, St. Bartholomew's Spital, and St. Thomas' Spital, and the

(*a*) See *post*, p. 254.

(*b*) Rot. Claus. 26 Edw. III. num.

38; Memoranda of the Royal Hos-

pitals, printed by Order of Common Council, 1836, p. 1.

New Abbey at Tower Hill, with the rents and revenues appertaining to the same, for the only relief of the poor, sick, and needy persons, so that for the future a greater number of poor, needy, sick, and indigent persons might be refreshed, maintained, comforted, found, healed, and cured of their infirmities frankly and freely, by physicians, surgeons, and apothecaries, with stipend, salary, and wages only to attend for that intent and purpose, so that all impotent persons not able to labour should be relieved by such hospitals and abbey, and all sturdy beggars not willing to labour should be punished, so that with God's grace few or no persons should be seen abroad to beg or ask alms" (c).

In pursuance of this petition, the present hospitals of St. Bartholomew in West Smithfield, Christ Church in Newgate Street, and Bethlem, then near Bishopsgate, were respectively granted to the city by certain letters patent and indentures between the king and the corporation of London (d), by which the crown endowed the first-mentioned hospital with an annuity of 500 marks, on condition of the corporation themselves providing an equal revenue.

The ordinary weekly payments to the church at the church door in London in lieu of tithes, had now become settled by act of parliament (e), and a scheme of the corporation to increase them on behalf of the poor turned out unsuccessful, for it was found necessary to pass an act of common council (f), reciting that fact, and ordering that the citizens and inhabitants should forthwith contribute and pay towards the sustentation, maintaining, and finding of the poor personages in the hospital for one

(c) *Id. ib.* Appendix; 1 Jor. 14, fo. 129.

(d) Letters Patent, dated 23 June, 1544; Rot. Parl. (36 Hen. VIII. pars 2, num. 41); Indenture, 27th December, 38 Hen. VIII.; and Letters Patent, 13th January, 38

Hen. VIII.; translations of which are to be found in the compilation quoted above.

(e) 27 Hen. VIII. c. 21; and 37 Hen. VIII. c. 12, *post*, p. 255.

(f) Dated 29th September, 1 Edw. VI.; Jor. 15, fo. 325, b.

whole year, the half of a fifteenth, to be recovered by distress, if necessary. By an act of common council, passed in the next year (*g*), reciting that this mode of levying the necessary sum was not a little grudged and repined at by reason of the poverty of the citizens, the surplus profits derived from the great beam, the beam of the steel-yard, the iron beam, package, gauging of wine and fish, and sundry other offices, were directed to be appropriated to the hospital, and the yearly payment of 500 marks to be levied on the companies, in the proportions therein set forth. Other projects for increasing the fund for the maintenance of the poor in London were also had resort to; and the above hospital, together with the house of the Grey Friars, now Christ Church, having been repaired, the suppressed hospital of St. Thomas in Southwark purchased, and the king's palace of Bridewell granted to the city, in order together to form sufficient receptacles for the various classes of paupers; a complete system of poor laws seemed established within the city, and the corporation were empowered, when and as often as it should seem expedient, to ordain, constitute, and make fit, wholesome, and honest ordinances, statutes, and rules for the right government of the poor in such hospitals, and to have full power and authority to examine all idle persons wandering about within the city and liberties, and to compel them to employ and exercise themselves with all their might in some honest labour and work (*h*). One of the orders made in pursuance of this charter we have already had occasion to allude to (*i*); and further provisions were also made for the same purpose, very much on the principle subsequently adopted by the legislature in the celebrated statute of the 43 Eliz. c. 2.

(*g*) 20th December, 2 Edw. VI.;
Jor. 15, fo. 398.

the above compilation, Appendix
IX.

(*h*) Charter of Edw. VI., dated
26th June, A. R. 7, for which see

(*i*) *Ante*, p. 139.

"In 1580," says Stow(*k*), "divers good ordinances were made in the city for setting rogues and idle persons to work, and for relief of the poor. Arts, occupations, works and labours, were directed to be set up in Bridewell. Stock and tools to be provided. All vagrants to be brought to Bridewell, that should be found remaining in the city after a proclamation for their departure to other places, where by law they ought to be provided for. The diseased to be sent to hospitals to be cured; and being cured, to be sent to Bridewell again, and there to be examined, and so to be discharged or set on work in such work as they should be found fittest for, and kept with their diet only. Such vagrants as should be found skilful in any occupation, the governors of Bridewell should use their endeavours that some citizen should take them into their service. Such as belonged by law to the charge of the city, having young children upon their hands, and none found by law to find them, those children to be sent to Christ's Hospital, so far as the house should be able to maintain them, the rest to be maintained at the charge of the parish."

The governors of all these hospitals are now incorporated, and have a common seal, which is in the custody of the city chamberlain; and deeds, to which the governors are parties, are sealed either in the court of aldermen or common council, but without being read over (*l*).

In pursuance of an agreement, dated the 12th June, 1782, confirmed by act of parliament (*m*), and of a subsequent act of common council (*n*), the present governors consist of the lord mayor and aldermen, twelve commoners, appointed by the court of common council to each of the four hospitals (*o*), and certain life governors,

(*k*) Strype's Stow, lib. 5, ch. 30, p. 541.

(*l*) 2 Rep. M. C. p. 186.

(*m*) 22 Geo. III. c. 77.

(*n*) 20th February, 1783.

(*o*) Counting Bridewell and Bethlehem as one.

either nominated by the aldermen (*p*), or chosen on account of a donation to the particular hospital (*q*).

The original design of these magnificent institutions, was to form a complete provision for the metropolitan poor, without resort to the degrading and pernicious habit of vagrancy, then so much in fashion. The general compulsory system of poor laws established by the statute of Elizabeth, however, in a great degree neutralized this object, though it would now require very little discernment to perceive the immense advantage of the whole management of the poor in London being vested in one body instead of being parcelled out among the different parochial authorities without the least uniformity of system to protect the public from imposition.

The power over the poor given to the corporation of London by the charters of Henry VIII. and Edward VI., confirmed with all the other London charters by act of parliament, ought not, strictly speaking, to have been repealed, except by the express enactment of another statute (*r*); and if any grounds existed for the City of London being more than any other place exempt from the interference of the Poor Law Commissioners, it undoubtedly would be this,—that they have, by charters confirmed by act of parliament, an independent power to provide for their own poor. Though, however, the original design of the hospitals has been thus perverted, they are still objects of the very highest utility. St. Bartholomew's and St. Thomas's are the only ones now used for the general reception of the sick; Bethlehem

(*p*) Every alderman, upon his election, is allowed to name one governor, who is expected to give a benefaction of £200. His fitness is also reported on by a committee of governors. 2 Rep. M. C. p. 186.

(*q*) At Christ's Hospital, the donation governors are elected by the

governors at large, on giving a benefaction of £400, and being reported a fit person by a committee, *id. ib.*; a £50 benefaction to the other hospitals, it is believed, is a sufficient qualification for a life-governor.

(*r*) See *ante*, p. 7.

is exclusively devoted to persons of unsound mind ; Christ Church is only a school ; and Bridewell we have before spoken of (s) as a prison for vagrants and unruly apprentices : but there have been also a great number of other institutions, of nearly similar design, established in the metropolis, which, with the immense charitable funds at the disposal of the different public bodies, altogether constitute London the most charitable city in the universe.

The evils of the parochial system of relief were earlier felt in London than any other place ; the parishes *within the walls* being no less in number than ninety-six, each one of which, however small in size, necessarily required by the 43rd of Elizabeth a machinery of poor law administration similar to that applied to the largest and most populous parishes. A statute or ordinance of the House of Commons was passed in 1649, enacting, that in regard of the great inequality of the ordering and relieving the poor through the different abilities of the several and respective parishes in the city and liberties of London, the common council should have power to divide the several wards, with the poor and stock to them belonging, into four equal parts and proportions, for the more effectual and indifferent relief of the poor, and the avoiding future differences and dissensions between the rich and poor parishes ; and a corporation was formed, consisting of a president and governors, for the general management and relief of such poor ; and by statute 13 & 14 Car. II. c. 12 (t), this ordinance was confirmed : the corporation was directed to consist of the lord mayor and aldermen, and fifty-two other citizens, chosen by the common council ; and it was enacted that there might be other corporations in Westminster, and all other places in Middlesex and Surrey within the bills of mortality, consisting of similar officers—those for Westminster to be chosen by the

(s) *Ante*, pp. 139, 237.

(t) Made perpetual by 12 Ann. st. 1, c. 18.

lord chancellor, and in Middlesex and Surrey by the justices; that these corporations should build work-houses to set the poor to work in, and provide a stock therefor, and levy a rate on the inhabitants, to be allowed in common council or at quarter sessions (u); and various powers are given for the punishment of rogues, vagrants, sturdy beggars, or idle and disorderly persons, for the levying rates and the management of charitable funds: all of which have now been repealed by various modern acts of parliament, and the work-house in London at last authorized to be sold (x).

With the increase of population in the metropolis, various parishes obtained local acts of parliament for the management of their own poor (y), and with respect to parish infants, it was enacted, that particular registers shall be annually kept by every parish within the bills of mortality, of all infant paupers, according to the forms given by the act, and lists of the children placed out apprentices to be sent to the company of parish clerks, who are required to make abstracts thereof to be printed and distributed among all such parishes (z).

Whether, however, in consequence of the former work-house establishment under the statute of Charles, or some other cause, it is not a little remarkable, that on the passing of the Poor Law Amendment Act, no one of the above ninety-six parishes possessed a workhouse, though the out parishes of the city were possessed of ample workhouse accommodation.

By a report of a committee of common council in 1836, it was recommended that the whole 108 parishes within the city *and liberties* should be comprehended in one union, under the Poor Law Amendment Act (a); which

(u) Sects. 7, 9, 10.

(x) 5 Geo. IV. c. 83; 10 Geo. IV. c. 43.

(y) *Vis.* for St. Botolph, Aldgate, 6 Geo. III. c. 64; for St. Botolph, Bishopsgate, 35 Geo. III. c.

61; for St. Bride's, Fleet Street, 39 Geo. III. c. 4, and 7 Geo. IV. sess. 1, c. 14; for St. Pancras, the 59 Geo. III. c. 39.

(z) 7 Geo. III. c. 39.

(a) 4 & 5 Will. IV. c. 76.

recommendation was adopted by the commissioners, and ordered to be carried into effect from and after the 30th March, 1837 (*b*); but owing to the circumstance before mentioned (*c*), of there being various acts of parliament constituting local boards within the different parishes capable of carrying the rules and regulations of the commissioners into effect, doubts were entertained upon the validity of the order, which was consequently afterwards amended so as to exclude all the parishes regulated by such local acts, and embrace only the ninety-six parishes within the city walls (*d*), under the name of the "City of London Union," and the remaining parishes subsequently formed into two separate unions by the name of the "East London and West London Unions" (*e*), with proper workhouses or poorhouses, &c., under the ordinary regulations of the act, similar to those in the rest of the metropolis.

(*b*) See 3rd Annual Report of
Poor Law Commissioners, p. 5.
(*c*) *Ante*, p. 248.

(*d*) 3rd Ann. Rep. P. L. C. *ubi*
sup.
(*e*) 4th Ann. Rep. P. L. C. p. 360.

CHAPTER XVI.

THE LAWS RELATING TO TITHES, CHURCHES, CEMETERIES,
&c. IN LONDON.

THE citizens of London claimed, from a very early period, not only exemption from the ordinary burthens imposed on the rest of the country by the Norman kings, but also from those even more arbitrary exactions demanded by the prevailing superstition for the support and aggrandizement of the ecclesiastical power; and hence arose the peculiar customs of London on the above various subjects.

Though the City of London seems to have been the earliest bishop's see established in England (*a*), yet owing to the circumstance of the Christian religion having been first *re-established* under the Saxons in the kingdom of Kent, the chief city of that kingdom, instead of London, was fixed on by Pope Gregory as the metropolitan see; with a reservation, however, in favour of the see of London, that that bishop should receive the pall from the pope himself, and not from Canterbury (*b*). Whether from this circumstance, or from some other claim of exemption on the part of the see of London, it is laid down as an ancient custom that the archbishop of Canterbury ought not to make a visitation in London (*c*). But the bishop of London is dean of the province of

(*a*) See a Catalogue of the Bishops and Archbishops of London, commencing A. D. 393, in 2 Stow, 118.

(*b*) Grindall, 59; Hume's Hist. of England, tit. Heptarchy; William of Malmesbury, fol. 10; Bede, lib. 1, c. 27. Augustin originally thought himself entitled, as archbishop of

Canterbury, to extend his authority even over the Continent, but this was opposed by the pope; *id. ib.*, and Wilkins's Leges Sax. p. 13.

(*c*) *Gablett's case*, Cro. Car. 339, 456; 3 Salk. 379; Burn's E. Law, tit. Visitation.

Canterbury, and to him, as such, the archbishop sends his mandate for summoning the bishops of his province, when a convocation is to be assembled, and he is consequently called the dean of the bishops (*d*).

There are five archdeaconries belonging to the diocese, *viz.* London, Essex, Middlesex, Colchester, and St. Alban's; all of which are in the gift of the bishop of London, and the archdeacon of London has the precedence of the rest; his jurisdiction extends to all the parishes in the city and liberties, (except the thirteen *peculiars* belonging to the archbishop of Canterbury (*e*), St. Botolph, Bishopsgate, which belongs to the bishop of London, and four other parishes (*f*), which are *peculiars* of the dean and chapter of St. Paul's;) the archdeaconry of London also includes three parishes in Middlesex, *viz.* St. James, Clerkenwell; St. Leonard, Shore-ditch; and St. Mary, Islington; all which parishes of his

(*d*) Harg. & Butler's Notes to Co. Litt. 95 a, note 102; Lyndw. 317, Oxf. ed.; Gibs. Synod. Angl. 17; Co. Litt. 94 a.

(*e*) There are thirteen parishes, of which the parish of Bow is the principal, constituting a deanery exempt from the bishop's authority, *viz.* Allhallows, Bread Street; Allhallows, Lombard Street; St. Dionis Backchurch; St. Dunstan East; St. John Evangelist; St. Leonard, Eastcheap; St. Mary, Aldermay; St. Mary le Bow; St. Mary Bothaw; St. Michael, Crooked Lane; St. Michael Royal; St. Pancras, Soper Lane; and St. Vedast, Foster Lane. And all ecclesiastical matters there arising are properly cognizable before the dean of the arches, (so called from the arches of Bow Church, where the court was formerly held,) Cowell's Interp. *voc.* Arches; 4 Inst. 377; Newcourt's Repertorium, vol. 1, p. 57. In Gablett's case

it is stated that by ancient agreement, the archbishop of *Canterbury* and bishop of *London* remit their courts to each other; so that, for matters arising within the diocese of *London*, the suit may be either in the arches, or in the consistory court of *London*. Cro. Car. *ubi sup.* This, however, is not now the practice, but the jurisdiction of the court of arches extends not only to ecclesiastical causes arising within the thirteen parishes, of which it has the prior cognizance, but also by way of appeal to the examining, affirming, or reversing, the sentences and decrees of all inferior ecclesiastical courts within the province of *Canterbury*. 4 Inst. 337; Bac. Abr. Eccles. Courts, 2.

(*f*) *Viz.* St. Giles, Cripplegate; St. Gregory, by St. Paul's; St. Faith, under St. Paul's; and St. Helen's, Bishopsgate.

jurisdiction he visits by himself for his official twice every year; swears the churchwardens every Easter; receives their presentments, and proceeds judicially thereupon; and yearly receives procurations of the clergy who are incumbents of those churches. He likewise proves wills and grants letters of administration in cases where a prerogative probate is not required, except in the parishes marked in the note with the letters "*Com.*" against them, which are subject to the commissary or official principal of the bishop of London (*g*). The archdeacon likewise

(*g*) Parishes in London and Middlesex subject to the jurisdiction of the archdeacon of London:—

- St. Alban, Wood Street, *Com.*
- Allhallows Barking, *Com.*
- Allhallows Great.
- Allhallows, Honey Lane, *Com.*
- Allhallows Less.
- Allhallows Staining, *Com.*
- Allhallows in the Wall.
- Ep. St. Alphage.
 - Andrew, Holborn.
 - Andrew Hubbard, *Com.*
- Ep. — Andrew Undershaft, *Com.*
 - Andrew, Wardrobe.
- Ep. — Anne, Aldersgate.
 - Anne, Blackfriars, *Com.*
- D. — Antholin's, *Com.*
 - Austin's.
 - Bartholomew, Exchange.
 - Barthol. Great.
 - Barthol. Less.
 - Bennet Finck, *Com.*
- D. — Bennett, Gracechurch Street, *Com.*
 - Bennett, Paul's Wharf, *Com.*
 - Bennett Sherehog, *Com.*
 - Botolph, Aldersgate.
 - Botolph, Aldgate.
- D. — Botolph, Billingsgate, *Com.*
 - Bride, *Com.*
- Christchurch.

- Ep. St. Christopher's, *Com.*
- Ep. — Clement, Eastcheap, *Com.*
 - Dunstan, West, *Com.*
 - Edm. Lomb. Street, *Com.*
- Ep. — Ethelburga.
 - Gabriel, Fench. Street, *Com.*
 - Geo. Botolph Lane, *Com.*
 - James, Clerkenwell.
 - James, Duke's Place, *Com.*
- Ep. — James, Garlickhithe, *Com.*
 - John Baptist.
- D. — John Zachary.
- Ep. — Kathar. Coleman.
 - Kath. Cree Church, *Com.*
 - Lawrence Jewry, *Com.*
 - Law. Pountney, *Com.*
 - Leon. Foster Lane, *Com.*
- Ep. — Magnus, Martyr.
 - Margar. Lothbury.
 - Margar. Moses.
- Ep. — Marg. New Fish Street, *Com.*
 - Margaret Pattens, *Com.*
 - Martin, Iron Lane, *Com.*
- Ep. — Martin, Ludgate.
- D. — Martin Orgars, *Com.*
 - Martin Outwich, *Com.*
 - Martin, Vintry, *Com.*
 - Mary, Abchurch.
 - Mary, Aldermanb. *Com.*
 - Mary Colechurch.
 - Mary at Hill.
 - Mary, Islington, *Com.*
- D. — Mary Mag. Milk Street, *Com.*

inducts into all the churches within his jurisdiction, except such as are in the collation of the bishop of London, and marked with the letters "Ep." before them; or in the collation of the dean and chapter of St. Paul's, with the letter "D." before them.

The dean and chapter have by charter the privilege of taking to their own use the profits of the temporalities of the see of London as long as the same remains vacant (*g*).

The ecclesiastical power in London was always materially controlled by the civic laws. Thus we have seen that the government of orphans, and administration of effects of citizens of London dying intestate, belong to the mayor and aldermen (*h*); and if any suit be commenced, or proceedings had, in the ecclesiastical court therefor, a prohibition lies (*i*).

So also cases of imputation of want of chastity, which are ordinarily of ecclesiastical jurisdiction, are, in London, properly cognizable in the civil, and not the eccle-

D. St. Mary Mag. Old Fish Street.

— Mary Mounthaw.

— Mary Somerset.

— Mary Staining.

— Mary Woolchurch, *Com.*

— Mary Woolnoth.

Ep. — Matthew, Friday Street, *Com.*

— Mich. Bassishaw.

— Mich. Cornhill, *Com.*

D. — Mich. Queenhithe.

D. — Michael le Quern.

— Mich. Wood Street, *Com.*

— Mich. Bread Street, *Com.*

— Mildred, Poultry, *Com.*

— Nicholas Acons, *Com.*

— Nich. Cole Abby, *Com.*

D. — Nich. Olave, *Com.*

— Olave, Hart Street, *Com.*

— Olave Jewry, *Com.*

D. — Olave, Silver Street.

— Peter, Cheap.

St. Peter, Cornhill.

D. — Peter, Paul's Wharf, *Com.*

— Peter le Poor, *Com.*

— Steph. Coleman, *Com.*

— Steph. Walbrook.

— Sepulchre, *Com.*

— Swith. Lond. Stone, *Com.*

D. — Thomas Apostle.

Trinity the Less.

Trinity, Minorities.

(*g*) See the authorities, Strype's Stow, lib. 3, p. 157.

(*h*) *Ante*, pp. 196, 197.

(*i*) 5 Co. 734; 2 Inst. 249, 660; March. 107; *ante*, p. 197, note (*g*). The jurisdiction of the consistory court of London does not accrue, unless there be *bona notabilia*, or goods of the deceased, to the value of £10 within the diocese. 4 Inst. 335; Godolph. p. 2, c. 22.

siastical court (*k*); indeed, the civic authorities formerly carried their jurisdiction very much further, and assumed to take notice of the misdeeds of the ecclesiastics themselves, who were summarily punished for incontinence by imprisonment in the *Tun* (*l*).

A further and more wholesome restriction upon the ecclesiastical courts in London is, the prohibiting them from interfering in cases of disputes about tithes. Tithes, in the strict sense of the word, do not seem to have been ever payable in the city of London. In the 13 Hen. III., Niger, bishop of London, made a constitution in confirmation of an ancient custom, that provision should be made for the ministers of London, by the offering every Sunday and every apostle's day, whereof the evening was fasted, one half-penny in the pound on the rents of the houses; and as there were, in addition to the fifty-two Sundays, eight apostles' days, the vigils of which were fasted, this offering or payment amounted to about 2*s*. 6*d*. in the pound (*m*); and in 1390, Arundel, archbishop of Canterbury, made an explanatory constitution, adding twenty-two saints' days on which the offering should be made, and the yearly payment in consequence amounted to 3*s*. 5*d*. in the pound; and this, in spite of the opposition of the citizens, was confirmed by two papal bulls of 1404 and 1453, and a few years after (*n*) the increased sum paid as a uniform composition, which was subsequently confirmed by act of common council (*o*); but the citizens of London, by no means content with the new system, at length submitted the question to the privy council, who made an order for the payment of tithes at the rate of

(*k*) *Ante*, p. 186.

(*l*) Strype's *Stow*, lib. 2, p. 134. By an ancient custom of London, when a chaplain kept a woman in his chamber suspiciously, any one might come there with the beadle of the ward, and enter the chamber and search. 2 Hen. IV. 126; 1 Rol.

Abr. 557, *S. C.*

(*m*) *Calth. Rep.* Case concerning Tithes; *et vid.* Year Books, 30 Edw. III. 1—3; Linwood's Constitution, fol. 146.

(*n*) 36 Hen. VI., Linwood, fol. 146.

(*o*) 14 Edw. IV.

2s. 9d. in the pound, which was confirmed by the 27 Henry VIII. c. 21, whereby it was enacted that all and every the citizens and inhabitants of the City of London, and suburbs within the liberties thereof, should, at the then present time of Easter next coming, pay to the curates of the said city and suburbs all such and like sums of money for tithes, oblations, and other duties, as the said citizens and inhabitants, by the order of the lord chancellor, and other the king's council, and the royal proclamation, paid, or ought to have paid, by force and virtue of the said order of privy council, and the same payments so to continue, from time to time, until any other order should be made by the king, and thirty-two commissioners named by him for that purpose, and defaulters were to be committed to prison by the lord mayor until they compounded.

By the 37 Hen. VIII. c. 12, it was declared, that such end, order, and direction as should be made by the persons therein named, or any six of them, before the ensuing 1st March, *and enrolled in Chancery within six months from the making thereof*, should be and remain as an act of parliament; and in the modern edition of the Statutes at Large is added a decree, by which it is directed that tithes in London should thenceforth be made after the rate following; that is to say, 1s. 4½d. for every 10s. yearly rent(p) of every house, shop, warehouse, cellar or stable, and 2s. 9d. for every 20s. rent, and so above the rent of 20s., ascending from 10s. to 10s. according to the rate aforesaid, to be paid quarterly by the occupiers or principal occupier.

In case of leases reserving less than the usual rent, tithe to be paid on the last previous reserved rent (q)—

(p) A rent for half a year, and afterwards for another half year, is within this section. Noy. R. 130; *Meadhouse v. Taylor*, Burn's E. L. tit. Tithes, 559. The rate is to be assessed on the improved fixed rent.

Sheffield v. Pierce, Gwillim, 503; *Ival v. Warrent*, *id.* 1054; *St. Paul's v. Morris*, 9 Ves. 155.

(q) The payment of a large fine, if attended by no diminution of the accustomed rent, is not fraudulent

s. 3, with a proviso, however, in favour of building or repairing leases—s. 21; owners of houses being occupiers or part occupiers to pay according to last rent, or in part according to that, and in part proportionably for what the remainder was let for—ss. 4 and 5.

The same rule is made applicable to lessees of several houses, or assignees of leases; but houses converted into warehouses, or *à converso*, to pay at the old rate, and the third penny to be abated to dye-houses and brew-houses, let with implements, and houses with wharfs.—s. 9. Houses, &c. subdivided into smaller tenements to pay tithes as before—s. 10; and all such tithes to be paid quarterly—s. 11.

Every householder paying ten shillings to be discharged from the four yearly offerings, but his wife, children, servants, or family taking the rights of the church at Easter to pay two-pence for the four offerings—s. 12: no tithes to be paid for pleasure gardens, unless attached to a house or above half an acre, or turned to profit by way of sale—s. 14; nor for houses of great men, or noble men, or noble women, halls of crafts, or companies previously exempt from tithes, kept in their own hands, and not let for any rent—s. 16 (*r*); nor for sheds, stables, cellars, timber yards, or tenter yards (*s*), which were never parcel of any dwelling, nor appertaining or belonging thereto, nor previously subject to tithes—s. 17; and the decree was declared not to interfere with any lesser composition than that established thereby—s. 18 (*t*); and

within this section. *St. Paul's v. Cricket*, 1 Daniel, 37; Wightw. 30; 5 Price, 14. See also 2 Ves. jun. 563.

(*r*) The deanery house of St. Paul's was held liable to tithes at 2s. 9d. in the pound on the full value. *Warden and Canons v. Dean of St. Paul's*, Wils. Exch. R. 1; 4 Pr. Rep. 65, *S. C.* A surmise that a house in London was a priory, and

discharged from tithe by the pope's bull, and afterwards belonging to the crown by 27 Hen. VIII. c. 28, is no answer to the claim of tithes. *Green v. Piper*, Cro. Eliz. 276.

(*s*) If a new house be built on the site of such sheds, &c. it is liable. 1 Dan. R. 45, *in notis*.

(*t*) An issue would be directed to try whether less than 2s. 9d. had ever been paid, though there were no

if any variance, controversy, or strife arise in the city for the non-payment of tithes; or any variance or doubt arise upon the true knowledge or division of any rent or tithes within the liberties of the city, or of any assessment thereof, or upon any other thing contained in the decree, that then upon complaint made by the party grieved to the lord mayor, the said mayor by advice of counsel shall call the parties before him, and make a final end of the same, with costs to be awarded therein—s. 19 (u); and if the mayor make not an end of the said complaint within three months after the same be made, or any of the parties find themselves aggrieved, the lord chancellor upon complaint made within three months then next following may decide the same with costs.—s. 20.

The decree does not appear to have been actually enrolled in Chancery (x) as required by the statute, and the

proof of any regular modus, *Bennett v. Trepas*, 2 Bro. P. C. 437; Bunb. 106; Gilb. Exch. R. 191; *St. Bride's v. Wilson*, Gwm. 635, *in notis*; so if there had been a customary payment, since the statute, of a less sum than 2s. 9d. in the pound, it may be good evidence to infer that such payment had such an existence as to bring it within this section, *Asitobus v. E. I. Co.*, 13 Ves. jun. 9; Gwm. 640; *Williamson v. Ewing*, 3 Gwm. 902, S. P.; but no entire exemption can be claimed in London. *Green v. Piper*, Cro. EL 276. See also 8 Vin. Abr. 568.

(u) Prohibitions have been invariably granted to restrain the ecclesiastical courts from interfering with London tithe causes, Gibs. 1223; but as the jurisdiction of the courts of Westminster is never taken away without special words, both the Courts of Exchequer and Chancery were decided to have a concurrent jurisdic-

tion with the lord mayor under this act. *Langham v. Baker*, Hardr. R. 116; Com. Dig. Dismes, M. 13; *St. Paul's v. Crickett*, 2 Ves. J. 563; Gwm. 1425; *Miller v. Kinaston*, Dickens, R. 773.

(x) The original act of parliament in the clerk of parliament's office, does not contain the decree, nor is there the least trace of any enrolment thereof having been made, either in the enrolment office, or upon, or annexed to the act, or by any document to be found therewith; and the original decree has an indorsement thereon, that it was delivered on the 25th February, 1545, the day after it was made, to the Bishop of London, to be registered; and it appears to have remained in the registrar's custody ever since. A rather conclusive proof of the decree never having been enrolled at all. See Town Clerk and City Solicitor's Report to the Court of Common Council, dated 10th April, 1812;

commissioners appointed under the 3 & 4 Edw. VI. c. 11, for the general revision of the ecclesiastical laws treated it as inoperative by substituting a lesser sum to be paid for tithes in London and other cities; and indeed as one of the most important reasons for the exaction of the larger sum—the maintenance and support of the poor—shortly after ceased to be any longer a religious duty, the clergy would have no great reason to complain of this advantage being taken of the technical objection; but after a great deal of opposition on the part of the citizens to the clergy exacting for their own use the full amount mentioned in the decree, it has recently been decided by the judgment of the highest court of appeal in this country, that the due enrolment of the decree must now be presumed (y).

With respect to those churches which were destroyed by the fire of London, the old law of tithes has been abolished by two acts of parliament, 22 & 23 Car. II. c. 15, and 44 Geo. III. c. LXXXIX., which fix the whole amount of tithes to be paid by each parish as follows:—

| | Amount under 22 & 23 Car. II. c. 15. | | | Amount under 44 Geo. III. c. LXXXIX. | | |
|-----------------------------------------------------------------------------------|--------------------------------------------|----|----|--------------------------------------------|----|----|
| | £ | s. | d. | £ | s. | d. |
| 1. Allhallows Lombard Street | 110 | 0 | 0 | 200 | 0 | 0 |
| 2. St. Bartholomew, Exchange (x) | 100 | 0 | 0 | 200 | 0 | 0 |
| 3. St. Bridges | 120 | 0 | 0 | 120 | 0 | 0 |
| 4. St. Bennet Finck | 100 | 0 | 0 | 100 | 0 | 0 |
| 5. St. Michael, Crooked Lane (a) | 100 | 0 | 0 | 200 | 0 | 0 |
| 6. St. Christopher, united to St. Margaret, Lothbury, by 21 Geo. II. c. 71 (b) | 120 | 0 | 0 | 366 | 13 | 4 |

Dr. Walton's Treatise on Tithes in London; Tyrwhitt's Arg. on the Non-enrolment of this Decree, published by Butterworth, 1823; and Report of case of *Owen v. Clarke*, before the Lord Mayor in that year, Sherwood & Co. 1823; and see *Macdougall v. Young*, 1 R. & M. 392.

(y) See *Macdougall v. Purrier*, 1 Eagle on Tithes, 458; 2 Dow. & Cl. 135; and *Anon.*, 1 Ventr. 257,

decided in compliance with a dictum of Lord Mansfield in *Eldridge v. Knott*, "that an act of parliament itself might be presumed." Cowp. 215.

(x) United to St. Margaret Lothbury and St. Christopher le Stock, by 2 & 3 Vict. VII. s. 74, *et seq.*

(a) United to St. Magnus and St. Margaret, New Fish Street, by 1 Will. IV. c. III. s. 9, *et seq.*

(b) See note (x).

| | Amount under 22 & 23 Car. II. c. 15. | | | Amount under 44 Geo. III. c. LXXXIX. | | |
|-----------------------------------------------------------------------|--------------------------------------------|----|----|--------------------------------------------|----|----|
| | £ | s. | d. | £ | s. | d. |
| 7. St. Dionis Backchurch . . . | 120 | 0 | 0 | 200 | 0 | 0 |
| 8. St. Dunstan's in the East . . . | 200 | 0 | 0 | 333 | 6 | 8 |
| 9. St. James, Garlickhithe . . . | 100 | 0 | 0 | 200 | 0 | 0 |
| 10. St. Michael, Cornhill . . . | 140 | 0 | 0 | 233 | 6 | 8 |
| 11. St. Michael, Bassishaw . . . | 132 | 11 | 0 | 228 | 18 | 4 |
| 12. St. Margaret, Lothbury, <i>see</i> St. Christopher. | | | | | | |
| 13. St. Mary, Aldermanbury . . . | 150 | 0 | 0 | 250 | 0 | 0 |
| 14. St. Martin, Ludgate . . . | 160 | 0 | 0 | 266 | 13 | 4 |
| 15. St. Peter, Cornhill . . . | 110 | 0 | 0 | 200 | 0 | 0 |
| 16. St. Stephen, Coleman Street . . . | 110 | 0 | 0 | 200 | 0 | 0 |
| 17. St. Sepulchre . . . | 200 | 0 | 0 | 333 | 6 | 8 |
| 18. Allhallows, Bread Street, and St. John the Evangelist . . . | 150 | 0 | 0 | 233 | 6 | 8 |
| 19. Allhallows the Great and Less . . . | 200 | 0 | 0 | 333 | 6 | 8 |
| 20. St. Alban, Wood Street, and St. Olave's, Silver Street . . . | 170 | 0 | 0 | 283 | 6 | 8 |
| 21. St. Anne and Agnes, and St. John Zachary . . . | 140 | 0 | 0 | 233 | 6 | 8 |
| 22. St. Augustin and St. Faith . . . | 172 | 0 | 0 | 286 | 13 | 4 |
| 23. St. Andrew Wardrobe, and St. Anne, Blackfriars . . . | 140 | 0 | 0 | 233 | 6 | 8 |
| 24. St. Antholin and St. John Baptist . . . | 120 | 0 | 0 | 200 | 0 | 0 |
| 25. St. Bennet, Gracechurch Street, and St. Leonard, East Cheap . . . | 140 | 0 | 0 | 233 | 6 | 8 |
| 26. St. Bennet and St. Peter's, Paul's Wharf . . . | 100 | 0 | 0 | 200 | 0 | 0 |
| 27. Christchurch and St. Leonard, Foster Lane . . . | 200 | 0 | 0 | 336 | 6 | 8 |
| 28. St. Edmund the King and St. Nicholas Acons . . . | 180 | 0 | 0 | 300 | 0 | 0 |
| 29. St. George, Botolph Lane, and St. Botolph, Billingsgate . . . | 180 | 0 | 0 | 300 | 0 | 0 |
| 30. St. Lawrence Jury, and St. Mary Magdalene, Milk Street . . . | 120 | 0 | 0 | 200 | 0 | 0 |
| 31. St. Magnus and St. Margaret, New Fish Street (c) . . . | 170 | 0 | 0 | 233 | 6 | 8 |
| 32. St. Michael Royal and St. Martin, Vintry . . . | 140 | 0 | 0 | 250 | 0 | 0 |
| 33. St. Matthew, Friday Street, and St. Peter Cheap . . . | 150 | 0 | 0 | 250 | 0 | 0 |
| 34. St. Margaret Pattens, and St. Gabriel, Fenchurch . . . | 120 | 0 | 0 | 200 | 0 | 0 |

(c) See note (a)

| | Amount under 22 & 23 Car. II. c. 15. | | | Amount under 44 Geo. III. c. LXXXIX. | | |
|-----------------------------------------------------------------------------|--------------------------------------------|----|----|--------------------------------------------|----|----|
| | £ | s. | d. | £ | s. | d. |
| 35. St. Mary at Hill, and St. Andrew Hubbard | 200 | 0 | 0 | 333 | 6 | 8 |
| 36. St. Mary Woolnoth, and St. Mary Woolchurch | 160 | 0 | 0 | 266 | 13 | 4 |
| 37. St. Clement, East Cheap, and St. Martin Orgars | 140 | 0 | 0 | 233 | 6 | 8 |
| 38. St. Mary, Abchurch, and St. Law- rence Poultney | 120 | 0 | 0 | 200 | 0 | 0 |
| 39. St. Mary Aldermay, and St. Thomas, Apostle | 150 | 0 | 0 | 250 | 0 | 0 |
| 40. St. Mary le Bow, St. Pancras, Roper Lane, and Allhallows, Honey Lane | 200 | 0 | 0 | 353 | 6 | 8 |
| 41. St. Mildred, Poultry, and St. Mary Colechurch | 170 | 0 | 0 | 283 | 6 | 8 |
| 42. St. Michael, Wood Street, and St. Mary Staining | 100 | 0 | 0 | 200 | 0 | 0 |
| 43. St. Mildred, Bread Street, and St. Margaret Moses | 130 | 0 | 0 | 216 | 13 | 4 |
| 44. St. Michael, Queenhithe, and Trinity | 160 | 0 | 0 | 260 | 13 | 4 |
| 45. St. Magdalen, Old Fish Street, and St. Gregory | 120 | 0 | 0 | 200 | 0 | 0 |
| 46. St. Mary Somerset, and St. Mary Mounthaw | 110 | 0 | 0 | 200 | 0 | 0 |
| 47. St. Nicholas Coleabby, and St. Nicholas Olave | 130 | 0 | 0 | 210 | 13 | 4 |
| 48. St. Olave Jewry, and St. Martin, Ironmonger Lane | 120 | 0 | 0 | 200 | 0 | 0 |
| 49. St. Stephen, Walbrook, and St. Bennett Sherehog | 100 | 0 | 0 | 200 | 0 | 0 |
| 50. St. Swithin, and St. Mary Bothaw . | 140 | 0 | 0 | 233 | 6 | 8 |
| 51. St. Vedast <i>alias</i> Fosters, and St. Michael le Quern | 160 | 0 | 0 | 266 | 13 | 4 |

Which respective annual sums of money payable quarterly (*z*), in lieu of tithes within the said respective parishes, and assessed as thereafter directed, are declared to be the certain annual maintenance (over and above glebes and perquisites, gifts and bequests to the respective parson, vicar, and curate of any parish for the time being, or to their successors respectively, or to others for their use) of the said re-

(*z*) 44 Geo. III. c. LXXXIX. s. 7.

spective parsons, vicars, and curates, legally instituted, inducted and admitted into the respective parishes aforesaid (a). And for the more equal levying of the same upon the several houses, buildings, and other hereditaments within the respective parishes, assessments are directed to be made by the aldermen, common council, and churchwardens, upon all houses, shops, warehouses, and cellars, wharfs, quays, cranes, water-houses, tofts of ground (remaining unbuilt), and all other hereditaments whatsoever (except parsonage or vicarage houses) (b), with a power of appeal to the lord mayor and aldermen (c), and assessments may be altered every seven years (d). Four transcripts of the assessments to be made and deposited with the town clerk, the Bishop of London, and the several vestries and incumbents.

The lord mayor and court of aldermen are invested with full powers to carry these acts into effect, or in their default two of the barons of the Court of Exchequer (e).

On any inhabitant refusing or neglecting to pay his assessment on demand to the incumbent, the lord mayor is empowered on oath thereof made before him to grant a warrant for the officer or collector, with the assistance of a constable in the day time, to levy the same by distress and sale of the goods of the defaulter, restoring to him the overplus of the produce of such goods (f), or in case of the lord mayor's refusing to interfere, then the lord chancellor, lord keeper, or two of the barons of the Court of Exchequer are authorized to act—s. 12; and no ecclesiastical court, &c. has any jurisdiction therein (g).

There are several parishes in London, including a portion of those destroyed by the fire, in which the tithes are

(a) 22 & 23 Car. II. c. 15, s. 3;
44 Geo. III. c. LXXXIX. s. 2.

(b) 22 & 23 Car. II. c. 15, ss. 4,
5, 6, 7; 44 Geo. III. c. LXXXIX.
s. 2.

(c) 44 Geo. III. c. LXXXIX.
s. 3.

(d) *Id.* s. 4.

(e) 44 Geo. III. c. LXXXIX.
s. 18.

(f) 22 & 23 Car. II. c. 15, s. 11.

(g) 22 & 23 Car. II. c. 15, s.
14; 44 Geo. III. c. LXXXIX. s.
19.

in the hands of **LAY** impropriators: among these are the parishes of **St. Bride's**; **St. Bennet Finck**; **St. Mary, Aldermanbury**; **St. Stephen, Coleman Street**; **Allhallows the Less**; **Christ Church**; **St. Lawrence Jewry**; **St. Lawrence Poultney**; and **St. Mary Colechurch**. The impropriators of these parishes were accustomed to make an annual allowance to the officiating minister out of the tithes, and receive the residue for their own use. The rights of these impropriators are expressly reserved (*g*), and they have still the power to enforce payment of 2s. 9d. in the pound on the rack rent (*h*), and the impropriators are directed to pay the same allowance as theretofore, which is to go in part payment of the minister's stipend, fixed by the act of parliament (*i*).

But the vicar of **St. Sepulchre** is entitled to the whole stipend fixed by the act in lieu of the one third of the impropriate tithes due to him by endowment of the London part of the parish, but exclusive of the one third of those due from the Middlesex part of the parish (*k*).

In London, it is said, the parishes are in the nature of towns, and not merely ecclesiastical districts (*l*). The venue in an action is consequently never laid in a parish unless in London (*m*), and the parishioners and churchwardens enjoy a more extensive power in the London parishes than elsewhere. The churchwardens are generally both chosen by the parishioners independent of the

(*g*) 22 & 23 Car. II. c. 15, s. 10; 44 Geo. III. c. LXXXIX. s. 8.

(*h*) *Sayer v. Mumford*, 1 Wood's Dec. 324; *Turnley v. Wilson*, 2 *id.*

(*i*) Burn's E. L. Tithes, 564.

(*k*) 44 Geo. III. c. LXXXIX. s. 9. The tithes in the following London parishes are settled by local acts, viz. **St. Andrew's, Holborn**, by 4 Geo. IV. c. CXVIII; **St. Botolph without Aldersgate**, by 7 Geo. IV.

c. CXVI; **St. Botolph without, Blahopsgate**, by 6 Geo. IV. c. CLXXVI; **St. Dunstan in the West**, by 1 Geo. IV. c. LIX; and **St. Giles Cripplegate**, by 7 Geo. IV. c. LIV.

(*l*) 4 Inst. 248, citing 7 Hen. VI. 36, 38; 7 Hen. VII. 4.

(*m*) *Powell v. Weekes*, 2 Show. 247; 5 Co. 120; 9 Co. 67; 1 Sid. 178; Cro. Jac. 150, 307; 2 Hawk. P. C. ch. 23, s. 92; see 17 Car. II. c. 2, s. 3.

parson (*n*), and are a corporation for all purposes to sue and be sued, and to purchase lands and take by grant (*o*), They have the disposal of the seats in the church independent of the bishop (*p*); and in most of the churches they are bound to repair not only the church but the chancel, and the parson exculpated therefrom (*q*); and consequently the churchwardens usually have a right to the money for burying in the church or churchyard, and the parson entitled to nothing but for burial in the chancel (*r*).

These customs may arise from the circumstance of the tithes in London being originally payable not to the officiating minister, but to some religious house, who made only a small allowance thereout to the minister, and the latter was consequently unable to contribute anything to the expenses of repairs; nor, on the other hand, was he sufficiently interested in the management of the building to insist on appointing either of the churchwardens.

By a constitution of Archbishop *Boniface* (*s*), it was directed that no parish clerk within the City of London, or elsewhere, should be chosen except by the parson or vicar or minister for the time being, which choice should be signified by the said minister, &c. to the parishioners on the succeeding Sunday. This canon was held, however, not to interfere with the previous custom of the

(*n*) 2 Roll's Abr. 287; *King v. Martin Rice*, *Ld. Raym.* 138; *Priv. Lond.* 99; *Warner's case*, *Cro. Jac.* 532.

(*o*) *Gibs.* 215; *Warner's case*, *Cro. Jac.* 532; *Jones*, 439; *March.* 22, 66; *Lane*, 22.

(*p*) *Wats.* c. 39; *Burn's E. L. tit. Church*, 359 a; *Comb. Incumb.* 387, 388; 2 Roll's Abr. 288; *Poph.* 140; 2 Roll. Rep. 24.

(*q*) *Lindw.* 53; *Ball v. Cross*, *Holt*, 138; and see 2 *Inst.* 489, 635. Mr. Elmes, in his work on the Law

of Dilapidations, erroneously supposes this claim of exemption on the part of the clergy to be derived from the Rebuilding Act of Charles II., which only referred to the rebuilding of the churches then destroyed, and not to the keeping them in repair; whereas the above authorities would exculpate the parson from all responsibility whatever. See *Elmes on Dilapidations*, ch. 1, p. 28.

(*r*) *Anon.*, 2 *Show.* 184.

(*s*) *Can.* 91; *Gibs.* 214; *Burn's E. L. tit. Parish Clerk.*

London parishes, for the vestry to choose the parish clerk (*t*).

The parish clerks of London were incorporated as far back as Henry III.'s time, and also by charter of Charles I., which included among them, besides the clerks of the city parishes, those also of the city of Westminster, the borough of Southwark, and the fifteen out-parishes, and all of them are declared to be exempt from serving other offices so long as they reside in their own parishes.

By this charter they are enjoined to make weekly reports of the christenings and burials within their respective parishes on every Tuesday, one copy whereof is required to be sent to the Queen, and another to the Archbishop of Canterbury (*u*). These reports are the bills of mortality so often mentioned in statutes relating to the metropolis. They were first made in 1562 and 1593, on account of the plague, and were afterwards subjected to various alterations; and the weekly bills of mortality include at this day the ninety-seven parishes within the city walls, the seventeen parishes without the walls, twenty-four out-parishes in Middlesex and Surrey, and ten parishes in Westminster (*x*).

A custom was once set up in London on the part of the clergy, that if any person died within any parish in London and was buried in another parish, whether in the chancel or otherwise, the fees should nevertheless be paid in the parish where he died; but this was held to be unreasonable and invalid (*y*). The unseemly spots of ground in this populous city appropriated to the burial of the dead, amidst the crowd and bustle of the living, rendered such a claim far more unjust than in any other place; and the public health, decency, and religion, urgently demand that the unnatural practice of using

(*t*) *Jermyn's case*, Cro. Jac. 670.

And see *Hartley v. Cook*, 9 Bing. 728;

3 M. & Scott, 230; 5 Car. & P. 441.

(*u*) See Strype's *Stow*, lib. 5, p. 231.

(*x*) For a more detailed account

see Northouk's *Hist. of London*, p. 524, *et seq.*

(*y*) *Toppeall v. Ferrars*, Hob. Rep. 175, 238; Stiles, 166; 1 Salk. 132, 134.

these patches of ground (*x*) as places of sepulture, in any case, should be absolutely prohibited by law.

During the plague of 1665, the corporation of London took the lead in establishing a public cemetery (*a*) for the interment of such bodies as could not be buried in the churchyards; but after the immediate danger of wholesale infection was over, the old system continued in force, and it was not until 1832 that proper and secluded places of interment were established in the neighbourhood of this the metropolis of the world.

The ancients, no less than ourselves, consecrated their places of sepulture, and connected with them all those hallowed associations, which afterwards formed a part of their literature and religion; and the story adopted into the heathen fables of the passage of the soul from its earthly tenement over the Lake Acheron after receiving the judgment of the final tribunal, is borrowed from the Egyptian practice of actually holding an inquest on every body previous to interment, and, according to the merits of the deceased, consigning him to the one or other side of the lake Achereusia, on the borders of which the dead

(*x*) The churchyard of St. Giles in the Fields, whose impure exhalations are recorded among the causes which occasioned the plague of 1665, contains about one acre, and annually receives nearly 300 human corpses, which are said to be from time to time exhumed, and heaped together when half decayed to make room for more. See Letter in Times newspaper of 23rd October, 1841. The pertinacity of the parties interested in the existing system, is not so much to be wondered at as the patience of the neighbouring inhabitants. The various acts for making the London Bridge approaches, and other local improvements, were not

only systematically opposed on the subject of altering the site of these old burial grounds, but fresh allotments were actually required in the very heart of the metropolis, for the continuance of the former unnatural practice of retaining the dead amid the abodes of the living.

(*a*) Bunhill Fields Burial-ground was walled round by the city, and consecrated as a public cemetery in this year; but was afterwards leased for the same purpose to the dissenters, who wisely took advantage of the criminal supineness of their fellow citizens of the mother-church. See Strype's Stow, lib. 4, p. 55; North. Hist. of London, p. 755.

were always buried (*b*). The burial of the dead in churches is a comparatively modern innovation, arising from the custom of building churches over the tombs of saints; and, like many other innovations, has become a nuisance.

The general cemetery for the metropolis at Kensall Green, was established under the statute 2 & 3 Will. IV. c. CXXXVI. on the model of the celebrated *Père la Chaise* at Paris; and since that time have followed the London Cemetery Company, under the statute 6 & 7 Will. IV. c. CXXXVI., and various others of rival excellence; and each interment is registered as under the old system.

(*b*) See Lectures on Hieroglyphics Marquis Spineto. London, 1829. and Egyptian Antiquities, by the

CHAPTER XVII.

LAWS RELATING TO BUILDINGS IN LONDON.

As far back as the time of Richard I., laws for regulating the buildings in London are to be found in the city books (*a*), by which it was ordained by the court of aldermen, that in consequence of the frequency of fires, no houses should in future be allowed to be built of wood or be thatched; but that all of them should have an outside wall, at least sixteen feet from the ground; and in order to appease contentions which might arise among neighbours in the city, upon enclosure between land and land, twelve aldermen should be chosen, in full hustings, to superintend all city works, and settle disputes about enclosures, party walls, &c., and be there sworn that they would faithfully perform their duty therein, and come at the mayor's summons, unless hindered by some reasonable cause, and be present with the mayor for executing the same.

These commissioners were empowered to make orders for the regulation of party walls (such as that they should be built sixteen feet at least in height, and three feet in breadth, and be built of stone for security against fire); also on the subject of gutters to receive and convey the water from the houses at the common cost, digging pits for water, making windows upon the neighbours (*b*), putting *corbells*, *i. e.* girders or beams, into the

(*a*) Lib. Horn. fol. 227; Lib. Constit.; Lib. Clerkenwell.

(*b*) By ancient custom of London, as certified in the case of *Plummer v. Bentham*, 1 Burr. 244, if the windows or lights of any messuage or house in the city, near or conti-

guous, or adjoining to another ancient messuage or house, or to the ancient foundation of another ancient messuage or house in the said city, of another person, are looking, fronting, or situate towards, upon, or over against, the other ancient

ing two stories, but not more than three stories above the ground, exclusive of rooms, (if any) in the roof, or of the height of twenty-two feet, and not thirty-one feet, from the surface of the ground or pavement above the area, before either of the fronts, to the top of the blocking course, or coping on the parapet, and dwelling-houses with the offices connected, otherwise than by a fence or fence-wall, or covered passage open on one or both sides, exceeding the value of £300 and not amounting to £850, and dwelling-houses exceeding five squares of building on the ground plan, and not more than nine squares, including internal and external walls.—s. 5.

The third rate comprises warehouses, stables, and other buildings, not being dwelling-houses, or included in the first, fifth, sixth, or seventh rates of building, and exceeding one clear story and not more than two clear stories above the ground, exclusive of the rooms (if any) in the roof, or of the height of more than thirteen feet, and not twenty-two feet from the surface of the pavement or way, above the area, before either of the fronts to the top of the blocking course or coping on the parapet, and dwelling-houses with the offices connected otherwise than by a fence or fence-wall, or covered passage open at the side, of the value when finished of more than £150 and not more than £300, and dwelling-houses exceeding three squares and a half of building on the ground plan, and not more than five squares, including internal and external walls.—s. 8.

The fourth rate comprises warehouses, stables, and other buildings not being dwelling-houses, or included in the first, fifth, sixth, or seventh rates, exceeding one clear story above the ground exclusive of the rooms (if any) in the roof, or exceeding the height of thirteen feet from the surface of the pavement or ground above the area, before either of the fronts to the top of the blocking course or coping on the parapet; and dwelling-houses, with the offices connected otherwise than by a fence or

fence-wall, or covered passage open on one or both sides, not exceeding when finished the value of £150; and dwelling-houses not exceeding three squares and a half of building on the ground plan, including internal and external walls.—s. 11.

The value and rate of the buildings to be fixed by the district surveyor, who must, notwithstanding decay in the materials, estimate them as if sound at the current price at the time of valuation; but he must not include in valuation either the soil itself or fence-walls (except railings to areas, and steps, front or back, made for the purpose of inclosure), or brick or stone arched vaults under the surface of the ground, front or back, or lead coverings or pavements over such vaults, or any parts of the party walls standing upon ground not belonging to the house valued; and in ascertaining the squares of building contained in any such building, being a dwelling-house, the same must be taken on the level of the floor, at the principal entrance to such dwelling-house, and no more than such parts of the party walls as belong to the building measured are to be included; and a power of appeal is given from the admeasurement or valuation of the district surveyor to the lord mayor or two justices of the peace, and from their decision to the quarter sessions.—s. 17.

The dimensions directed to be observed in first, second, third, and fourth rate houses, are very minutely laid down; and for greater facility of reference, the author has reduced them into the following scale:—

EXTERNAL WALLS

| | Thickness of foundation at least. | Thence diminishing on each side of the wall to top of footing. | Height of footing at least. | Depth of footing below the upper surface of the flooring boards of the cellar story. | Thickness from top of footing to underside of ground floor. | Do. from top of footing to underside of one pair of stairs floor. | Do. from underside of ground floor to underside of blocking course or coping on the parapet. | Do. from one pair of stairs floor to underside of the plate under the roof or gutter. | Do. from underside of plate or one pair of stairs floor to underside of blocking course or coping on the parapet. | Thickness of such parts as are made of stone. |
|-----------------|-----------------------------------|----------------------------------------------------------------|-----------------------------|--------------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| | Bricks, ft. in. | Inches. | Inches. | Inches. | Bricks, in. | Bricks, ft. in. | Bricks, in. | Bricks, in. | Bricks, in. | Below ground floor. |
| 1st rate, s. 3 | 2½ or 1 9 | 24 | 9 | 2 | ..... | 2 or 1 5½ | ..... | 1½ or 13 | 1 or 8½ | 14 |
| 2d rate, s. 6 | 2 or 1 5½ | 24 | 9 | 2 | ..... | 1½ or 1 1 | ..... | ..... | 1 or 8½ | 9 |
| 3d rate, s. 9 | 2 or 1 5½ | 24 | 6 | 2 | 1½ or 13 | ..... | 1 or 8½ | ..... | ..... | ..... |
| 4th rate, s. 12 | 2 or 1 5½ | 24 | 6 | 2 | 1½ or 13 | ..... | 1 or 8½ | ..... | ..... | ..... |

PARTY WALLS.

| | Thickness of foundation at least. | Thence diminishing on each side of the wall to top of footing. | Height of footing at least. | Depth below the surface of the pavement and flooring boards of the cellar story. | Thickness from top of footing to underside of ground floor. | From thence to underside of floor of rooms (if any) in the roof of the highest building adjoining. | From thence to the full height of 18 inches above the square of the rafters of the building adjoining, and one foot above the gutter. | From underside of floor of rooms in roof of adjoining building to top of wall. | From underside of side of ground floor to ditto. |
|-----------------|-----------------------------------|----------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------|
| | Bricks, ft. in. | Inches. | feet. in. | in. | Bricks, ft. in. | Bricks, ft. in. | Bricks, in. | Bricks, in. | Bricks, in. |
| 1st rate, s. 4 | 3½ or 2 6½ | 4½ | 1 0 | 2 | 2½ or 1 9½ | 2 or 1 5½ | ..... | 1½ | ..... |
| 2d rate, s. 7 | 3½ or 2 6½ | 4½ | 9 | 2 | 2½ or 1 9½ | 2 or 1 5½ | ..... | ..... | ..... |
| 3d rate, s. 10 | 3 or 2 2 | 4½ | 9 | 2 | 2 or 1 5½ | ..... | 1½ or 13 | ..... | 1½ or 13 |
| 4th rate, s. 13 | 3 or 1 5½ | 2½ | 9 | 2 | 1½ or 1 1 | ..... | ..... | ..... | 1 or 8½ |

- Recesses above the ground floor in the external walls of 1st and 2nd rate houses are excepted from this scale, provided they are arched over in every story, so that the end and back are each one brick or 8½ inches thick.—ss. 3, 6.
- + i. e. lengthways.
- ‡ All party walls above four stories high are required to be built as of the first rate.—s. 15.
- § Party walls to 4th rate houses four stories high must be built as of the 3rd rate.—s. 16.

The fifth rate comprises all buildings not comprised in the first or seventh rates, at the distance of four, and within eight feet of any public road, street, or causeway, and detached from any other building not in the same possession, full sixteen feet, and not thirty feet, or connected with any other building only by a fence or fence-wall.—s. 18.

The sixth rate comprises buildings not comprised in the first rate, eight feet distance from the road, and thirty feet detached from any other building not in the same possession, or connected only as above.—s. 19.

The seventh rate comprises crane-houses upon wharfs or quays, and shambles, windmills or watermills, and buildings without the cities and liberties of London and Westminster, used as workshops or drying places for tanners, fellmongers, glue-makers, size-makers, calico-printers, whitsters, whiting makers, curriers, leather-dressers, buckram-stiffners, oil-cloth painters, wool-staplers, throwsters, parchment-makers, and paper-makers, so long as they are used for such purposes and no longer.—s. 20.

And all these three classes of buildings may be built of any dimensions, and with any materials whatsoever (ss. 18, 19, and 20); but should any one of the walls afterwards become a party wall, it must be built agreeably to the rate it would then be of; but crane-houses, or all additions or enlargements thereto, must be wholly built of stone, brick, slate, tile, oak, elm, steel, iron or brass; and no external part of any crane-house or other seventh rate building must be covered with pitch, tar, or other inflammable composition or materials.—s. 21.

Offices belonging to buildings of the four first rates or classes of building, being entirely free and detached therefrom, or connected only by a fence or fence-wall, or covered passage open on both sides, are deemed separate buildings, and rated accordingly.—s. 22.

The breasts of all chimneys and flues, and chimney breasts, whether in party walls or not, and the withes or partitions between any flues, are required to be

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built with brick or stone, and chimney breasts and backs, and the breasts, backs, withes, or partitions of flues, must be rendered or pargetted within and without, except the outside next any vacant ground and intended to be built against, which must be lime-whited, or in some durable manner marked or distinguished, and rendered or pargetted as soon as any building is erected against it—s. 29; and the following scale of thickness is directed to be always observed in the construction of chimneys.

| | Thickness of backs of chimneys from hearth to 13 inches above the mantel in party walls, s. 29. | Do. in other walls, except when built against the wall, in which case it may be half a brick thinner, s. 45. | | Back to back in party walls. The distance of each chimney back from centre of party wall, s. 29. | | Back to back. Distance of back of each flue from do. s. 29. | Breasts of flues whether in party walls or not to be of stone or brick, and of the thickness of at least | Withes or partitions between any flues if of brick. |
|----------------|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| | | | | If either building of the 1st rate. | 2d, 3d, 4th rates. | | | |
| | Inches. | In. | In. | Inches. | Inches. | Inches. | Inches. | Brick. |
| Cellar story. | 13½ | 13 | 8½ | 8½ | 6½ | 2 | 8½ | 1 |
| Other stories. | 8½ | 8½ | 8½ | 4½ | 4½ | 2 | 4 | ½ |

There must be no timber whatever over the opening of the chimney for supporting the breast, but an arch of brick or stone, or iron bar over the opening for that purpose; and no timber must be laid in the wall under the hearth, except it be in every part at least eighteen inches below the surface of the hearth. The latter must be laid wholly on brick or stone, except in a cellar or ground story, and laid and bedded on the solid earth.

All chimneys must have slabs or footpaces before them, of tile, stone, marble or iron, at least eighteen inches broad, and at least one foot longer than the opening: or the chimney, when finished, and the slabs or foot-paces must be laid on brick or stone trimmers, at least eighteen inches broad from the opening, or the perpendicular face of the arch over the opening supporting the breast; except it be in a cellar or ground floor, and laid or bedded in the solid earth as before mentioned. No timber or wood-work whatever must be laid within

two feet of the inside of any oven, stove, copper, still, boiler, or furnace, or nearer than nine inches to the opening of any chimney, or than five inches to the inside of the flue of any chimney, oven, &c., or than nine inches to the inside of the flue of any such oven, &c., where there is any such timber nearer than five feet above the mouth.

No wood-work whatever must be affixed to the front of any jamb or mantel, or to the front or back of any chimney or flue, except the wood-work be affixed by iron nails or holdfasts, or other iron fastenings; and there must be no iron nail, iron holdfast, or other iron fastening, more than three inches in the wall against such chimney or flue, or nearer than four inches to the inside of the opening of any chimney: and no chimney must be erected on any timber-work whatever, except on such piling, bridging, or planking, as may be necessary below the foundation; but every chimney must be erected on such piling, &c., or on solid ground, or on a brick or stone foundation, or set on brick or stone corbles, or iron brackets, or iron shoes, supported by brick or stone foundations.—s. 45.

External walls of buildings of the five first rates must be of brick, stone, artificial stone, lead, copper, tin, slate, tile or iron, except the necessary piling, bridging, and planking for the foundation, and the necessary templets, chains, bond-timbers, doors, sashes, window shutters and door and window frames, and the tiers or stories of door-cases and doors to warehouses of the four first rates of building. The door and window frames must be set in reveals, four inches at least from the front of the building. The breast-summers, story-posts and plates, may, however, be made on the ground story, and with the tiers or stories of door-cases, and doors to all such warehouses, need not be fixed in reveals. Stall-boards for shops may also be made on the ground story. Story-posts or breast-summers must not be fixed more than two inches deep in party walls, or placed in front nearer than seven inches to the centre line of the party wall, if the latter be two

bricks thick; or nearer than four inches and a half to the centre, if it be more than one brick and a half thick.

No timber-work whatever other than and except such breast-summer, story-posts and plates, and such tiers or stories of door-cases and doors, must be laid in any such external wall nearer than four inches to the external surface; and all corner story-posts must be of oak or stone, and at least twelve inches square.—s. 46.

Flats, gutters, or roofs of first, second, third, fourth, or fifth rate buildings, and every external part thereof, are required to be covered with copper, glass, lead, tin, slate, tile, or stone (*g*), except the doors, windows, and frames on such roofs.—s. 47.

Every coping, cornice, fascia, window dressing, portico, balcony, balustrade, or other external decoration or projection of the four first rates of building, and every frontispiece to any first-rate building, must externally be of brick, stone, burnt clay, or artificial stone, stucco, lead, or iron (*h*), except the cornices and dressings to shop windows, and the covered way not extending beyond the original line of the houses in the same street, and covered with stone, lead, copper, slate, tile or tin (*i*); and neither the covered way, or cornice, or dressings of any shop window, nor the roof of any portico, must be higher than the underside of the sill of the window frame of the one pair of stairs window to which it belongs, and no water must be suffered to drain near any public street, square, or court, from the roof of any first, second, third, or fourth rate building, except from the roof of porticos or other entrances, but must be conveyed by lead, copper, tin, or iron gutters or pipes, or by wooden trunks, or brick or stone funnels, to the drains or channel stones, on or below the surface of the ground, made for that purpose, or to some cistern or reservoir, or to any

(*g*) Or John's patent tessera, 50
Geo. III. c. LXXV. s. 1.

(*h*) Or John's patent tessera, *id. ib.*
(*i*) Or John's tessera, *id. ib.*

front of such building, not abutting upon any public street or way; and every brick or stone funnel must be in every part below the surface of the foot pavement, and every wooden trunk below the tops of the ground story windows.—s. 48.

No front window or other projection must extend beyond the line of the street, except projections for copings, cornices, facias, door and window dressings, or for open porticos, steps or iron palisades, or for shop windows on the ground floor, and stall-boards, which in streets or places thirty feet wide, must not project more than ten inches, and covering eighteen inches; or in streets less than thirty feet wide, project more than five inches, and covering thirteen inches from the upright of the building; and the materials of all other bow windows and projections in first, second, third, or fourth rate buildings, must be the same as directed with regard to party walls.—s. 49. Old external walls or enclosures may be repaired with the same materials that they are made of, except the external covering of the roofs, &c.; but if the building be in any way taken down as far as the breast-summer or one pair of stairs floor, then the whole building comes within the regulations of the act.—s. 51. And no old bow window or projection can be rebuilt, otherwise than according to the regulations of the act, unless it can be proved to be cotemporary with the building itself, or level with the original line of the street.—s. 52.

No stack of warehouses is allowed to be above thirty-five squares, including internal and external walls, and the due proportion of the party wall; and no enlargement can be made to exceed those dimensions, unless each stack of warehouses be separated and divided by party walls built according to the act; and no communication must be made through party walls, unless by stone door-cases and sills, and wrought iron doors of a quarter of an inch thick; and no timber to be laid in the brick-

work of any wall in such stack of warehouses nearer than eighteen inches to the opening of such communication.—s. 53.

No building for stables to contain more than twenty-five squares on the ground plan, including internal and external walls; and no communication door, without having stone door cases and iron doors.—s. 54.

All buildings divided into distinct tenures on the ground floor, (except buildings in the inns of court or chancery, the Royal Exchange, companies' halls, and warehouses and dwelling-houses let at a rack rent of not more than £25 a year,) are deemed separate buildings—s. 55, except with respect to warehouses—s. 56, or stables—s. 57; so that in case they exceed the specified number of squares, they are separated by party walls, &c. according to the act; but buildings of the fifth and sixth rates, in separate and distinct tenures, and not at the requisite distances, are deemed nuisances, and may be pulled down accordingly—s. 58.

No iron or other pipe or funnel for conveying smoke or steam must be fixed next any public street, square, court, or way in the front of any first, second, third, or fourth rate building: nor any pipe or funnel within-side nearer than fourteen inches to any timber or other combustible material, nor any brick funnel in the front extending beyond the line of the street, &c.—s. 59.

Every building contrary to these regulations is, *de facto*, deemed a *common nuisance*, and the builder or owner may be compelled to enter into a recognizance to demolish it—s. 60; and the lord mayor, or any two justices within the district, may order the same to be taken down, and the materials sold to pay the expenses of removal, and penalties are inflicted for disobedience to the act in other respects (k).

(k) Under the former act, of the 12 Geo. III., it was decided, that an offence was committed as soon as the

wall, or at least the shell, contrary to the act, is pitched, and nothing done to the inside can alter it.

The court of aldermen within the city, and the justices of the peace at quarter sessions in Middlesex, Surrey, Westminster, and the Tower, are empowered to nominate and appoint such and so many discreet persons skilled in the art of building, as they respectively deem fit, as district surveyors, to see the rules and regulations of the act carried into effect, and notice of the place of abode of each surveyor is required to be left with the clerk of the peace.—s. 62. Before any building or wall is begun to be built, the master, workman, or other person engaged therein must give twenty-four hours' notice to the district surveyor, who is required to view the building or wall, and see that all the rules and regulations of the act are observed, and be remunerated according to a scale laid down in the act—s. 63; and in default of notice, the district surveyor is entitled to treble satisfaction, and the defaulter is liable to a penalty of £20—s. 64.

The district surveyor is required to give information of irregular buildings to the lord mayor of London, or any two justices of the peace having jurisdiction within the district, who are empowered to hear and determine the complaint, and cause the irregular building or wall to be demolished or amended—s. 65: and workmen wilfully or carelessly offending against the act, are liable to a penalty of 50s.—s. 66.

Houses and walls are required to be surveyed within fourteen days after being covered in, and oath of their conformity with the act made by the district surveyor; which oath must be filed with the clerk of the peace within ten days afterwards, under a penalty on the builder of £10, and the like sum per month for default in any one particular.—s. 67.

Payne v. Hill, Loft, 330. These penalties are recoverable against the master builder, and not against the

proprietor of the premises. *Maymot v. Southgate*, 3 Esp. 223.

District surveyors misbehaving, are to be discharged, and be incapable of being re-appointed.—s. 68.

If any house or building be presented by the proper authorities as in a ruinous condition, the court of aldermen in the city, or the churchwardens or overseers elsewhere, are directed to have a hound put up for safety of passengers, and to cause notice to be given to the owner, or affixed on the building, requiring the same to be repaired or taken down; and if such notice be not complied with within fourteen days, the court of aldermen, or churchwardens or overseers, as the case may be, may order the building to be taken down and secured, and the materials sold to pay the expenses—s. 70; paying the overplus to the owner, or, if the materials are insufficient to pay the expenses, then the deficiency to be made good by the owner, or levied by distress upon the premises.—s. 71 (*k*).

No person is allowed to distil or boil turpentine, or draw oil of turpentine and rosin by distilling turpentine, or boiling oil and turpentine together, exceeding ten gallons at a time, in any place nearer than fifty feet to any other building, under a penalty of £100 for every offence—s. 72; with an exception, however, in favour of ship, barge, or boat builders, or mast-makers, or other such persons on the Thames—s. 73.

In cases of intermixed property, as where places are built over a public way, or having rooms the property of different persons, (except in the inns of court or chancery—s. 32,) the owners may be mutually compelled to

(*k*) By an old custom of London, it is necessary to apply to the lord mayor, aldermen, and chamberlain for a special license to hound off a portion of the street, in order to build or repair any house in the city, which house is made out by an officer called the *Serjeant of the channell* (see 2 Rep. M. C. p. 93);

and when the license has been obtained, it is said the party has a right to keep the hound there independent of any one. The validity of this custom is, however, at the present moment about to be decided upon in the Court of Common Pleas. See *Bradby v. Christ's Hospital*, 5 Nov. 1841.

join in building party walls; the proportion of expense of each to be determined by a jury in the lord mayor's court, within the city, or at quarter sessions elsewhere: and upon payment or tender of the amount awarded within fourteen days after judgment, the owner of either house, in case the other be unwilling, may pull it down and enter the adjoining building in the presence of a peace officer, and remove the goods and furniture in order to pull down or repair such party walls: and a penalty of £10 is inflicted for obstructing the persons employed therein.—s. 33 (*l*).

Old party walls and party arches, when decayed, may be rebuilt, after three months' notice (*m*) from the proprietors of the adjoining premises, in the form specified in the act of parliament—s. 38; each owner or occupier to name two surveyors to view the same; and if they do not certify within one month, any justice of the peace may name a fifth surveyor as umpire; and upon service of the surveyor's certificate within three days, and no appeal or notice thereof given within fourteen days afterwards, the party desirous of repairing or rebuilding, may proceed as under section 33. Owners of first, second or third rate houses, or any houses with wooden partitions, are required to give three months' notice before pulling down old party walls or such wooden partitions, and can then proceed as before directed.—ss. 39, 40.

The party rebuilding such party walls, &c. is to be

(*l*) If an act of trespass complained of were committed with a *bond fide* intention to pursue the directions of the act, though it be not justified by it, the defendant is entitled to notice of action, under section 100 of the act of parliament, (*post*, p. 283,) see *Wells v. Ody*, 2 C. M. & R. 128, 184, 545; 7 Car. & P. 22; 1 Gale, 137: a party is not, however, protected from liability for any collateral damage resulting from the building so erected; and an action

on the case is maintainable by the occupier of an adjoining house, for heightening and building on a party fence wall, whereby his windows were darkened. *Same v. Same*, 1 Mees. & W. 452; 7 C. & P. 410; and see *Titterton v. Conyers*, 5 Taunt. 465; S. C. 1 Marsh. 140.

(*m*) This three months' notice is only necessary when the parties cannot agree. *Peck v. Wood*, 5 T. R. 130.

reimbursed by the owner entitled to the *improved rent* (n) of the adjoining premises, according to the rate and in the manner directed by the act; and until such payment, the property in the wall is vested in the party making such necessary alterations: but ten days after the party wall is finished, an account (o) is required to be left with the owner of the adjoining buildings, of what he is liable to pay (p).

(n) This expression in the act of parliament has given rise to a great deal of litigation, the owner of the *improved rent*, not of the ground rent, being *prima facie* liable, *Peck v. Wood*, 5 T. R. 130; but it has been held that the statute means the lessor of a house at a rack rent, where there is no other person entitled to any kind of rent, although the lessee has materially improved the premises, *Beardmore v. Fox*, 8 D. & E. 214; *Lambe v. Hemans*, 2 B. & Ald. 461; or even assigned the term for a small premium, *Southall v. Leadbitter*, 8 D. & E. 458; as the burden was intended to be thrown on lessees for long repairing or building terms, who underlet at a considerable increase of rent, *id. ib.*; but of course, as between the landlord and tenant, the latter will be liable, if he expressly covenant to repair and amend party walls, &c., *Barrett v. Duke of Bedford*, *id.* 662; and if the lessee, even at a rack rent, underlet at an advanced rent, he is liable under the statute, independent of the covenants, *Sangster v. Birkhead*, 1 B. & P. 303; *Collins v. Wilson*, 4 Bingh. 551; *S. C.* 1 Moore & Payne, 454; so also if he obtain a considerable premium in lieu thereof, *Stuart v. Smith*, 2 Marsh. 435; *S. C.* 7 Taunt. 158; Holt, 321. A tenant, however, who rebuilds a house, with-

out a lease or agreement for a lease, and therein makes use of the party wall of the adjoining house, cannot be sued for half the cost, as owner of the improved rent, though he afterwards obtains, in consideration of the rebuilding, a beneficial lease, at a low ground rent, *habendum* from the day before the rebuilding. *Taylor v. Reed*, 6 Taunt. 249. An executor or administrator may be liable as the owner of the improved rent, under this section, even though he has no other assets than the improved rent; for the expenses of pulling down and rebuilding a party wall are made a charge upon the land in the hands of the owner of the improved rent, and take precedence of all other claims. *Thacker v. Wilson*, 4 Nev. & M. 659; 3 Ad. & Ellis, 142; 1 Har. & Woll. 131.

(o) If this account be not delivered within the proper time, the amount cannot be recovered, *Philp v. Donald*, 2 Taunt. 66; but where there is no adjoining house at the time of building the party wall, the owner is not confined to the ten days, but has a reasonable time after the adjoining houses are attached to claim payment. *Collins v. Wilson*, 4 Bingh. 551; *S. C.* 1 Moore & P. 454.

(p) A tenant under covenant to repair, cannot maintain an action on this act against his landlord, for a moiety of the expense of rebuilding

All party walls must be such as are required for the highest rate of the adjoining building, and may be raised by the owner of either side; but owners of the other side, if they make use of them, must contribute proportionably for the part they use. Party fence walls may be raised by the owner of either side, but must not be used as party walls, unless of sufficient thickness. Owners of either side may build; but the adjoining owners, using such wall, must also contribute to the expense—s. 43; but if the party wall extend further on the ground of the party building, than the party fence wall did, the property in the soil to remain as before—s. 44.

If the fore or back fronts of any old building be rebuilt as low as the breast-summit, or one pair of stairs floor, within five years of each other, the party-walls become subject to the regulations of the act, and party timber partitions must be taken down when one house or one

a party wall, which being out of repair the tenant pulled down, and rebuilt at the joint expense of himself and the occupier of the adjoining house, to whom he had given the notice required by the statute in his landlord's name, but without his authority. *Pizey v. Rogers*, 1 R. & M. 357. Where notice of pulling down and rebuilding a party wall was given under the act, and the tenant of the adjoining house, under a covenant to repair, finding it necessary, in consequence, to shore up his house, and to pull down and replace the wainscot and partitions of it, instead of leaving such expenses to be incurred and paid by the owner of the house, giving notice in the manner prescribed by the act, and afterwards paying the same to him upon demand, employed workmen of his own to do those necessary works,

and paid them for the same: it was held, that he could not recover over against his landlord such expenses incurred by his own orders, and paid for by him in the first instance; all the powers and authorities given by the act, in respect of any works to be done, being given to the owner of the house intended to be pulled down and rebuilt, and the landlord of the adjoining house being only liable by the act to reimburse his tenant, money paid by him to the other owner, for such works as are authorized to be done by such other owner in respect of such adjoining house. *Robinson v. Lewis*, 10 East, 227. Under a general covenant to repair, the tenant is not bound to join in the expenses of party walls under this statute. *Moore v. Clark*, 5 Taunt. 90.

front is rebuilt, or two-third parts of one of such fronts are taken down to the breast-summer, or one pair of stairs floor, and rebuilt, or when condemned under the act.—s. 45.

There are the usual clauses in the act as to informality in the distress, tendering of amends, and limitation of actions, &c.—ss. 87 to 99; with the further proviso that no action or prosecution should be commenced against any person or persons for anything done in pursuance of the act (*q*), until after twenty-one days' written notice thereof, nor after the expiration of three calendar months next after the commission of the offence: and actions or suits, the cause whereof arises within the city or liberties of London, must be laid and tried in London, and not elsewhere; and in the county of Middlesex, if the cause of action arise in other places within the limits of the act; and the defendant is empowered to plead the general issue, and give the special matter in evidence, and entitled to treble costs—s. 100.

Not only are the buildings in London thus regulated by statute, but the qualifications of the persons employed in the various departments of building are also the subject of legal regulation; all builders, masons, carpenters, plasterers, bricklayers, &c. in the metropolis, being, strictly speaking, under the direct control of the civic authorities. In accordance with the principle to which we have before alluded (*r*), these various trades were at different periods all incorporated and subject to the surveillance of the ruling bodies of their several companies.

The Carpenters' Company have, by their charters, the power of compelling all persons using the art or mystery of carpentry within the city of London to take their freedom from them, although belonging to any other com-

(*q*) Or even a trespass committed with a *bond fide* intention of pursuing the directions of the act. *Ante*,

p. 281, note (*l*).

(*r*) *Ante*, p. 71.

pany(s). The master, wardens, and commonalty have the regulation of the members of the trade in London, or two miles thereof, and powers of search and inspection of timber and regulation of matters relating to the trade, and also of all works, edifices, buildings, &c., and all materials used therein, within the city and four miles thereof, and to enter the house, &c. of any freeman or person using the trade of carpentry, and to see if the work be done sufficiently and true according to law, and the ordinances, usage, and customs of the city; and if such works and materials be deceitful, false, insufficient, or unlawful, then power is given to seize and sell the same, according to law and the usage of the city; and if buildings be badly or inartificially or insufficiently worked and made, the company are empowered to stop the same until the commissioners(t) for viewing edifices and buildings in London and Westminster have notice thereof.

By the charter of the Joiners' Company(u), it is provided, that none shall exercise the mystery or faculty of joiners and ceilers within the city and suburbs, or two

(s) Charter, 20th October, 26 Car. II.; charter, 7th July, 17 Edw. IV.; 15th July, 5 Jac. I.; 17th July, 16 Car. I.; 20th October, 26 Car. II.; 2 Rep. M. C. London Comp. p. 128.

(t) Or, at this day, the district surveyor. It is the opinion of practical men that the powers of the company might still be beneficially exercised, the Building Act having nothing to do with the quality of the materials, 2 Rep. M. C. p. 134 (2nd part); but, unfortunately, the general characteristic of these companies has long been inefficiency on every subject connected with their original institution. There is a private body in London called the Architects' Society, consisting of the principal

architects of the metropolis, who also among themselves exercise a very salutary influence over the management of buildings in London.

By the usage of the carpenter's trade, when a journeyman is sent by a master carpenter from London to work in the country, the latter is bound to pay the expenses of the journeyman and his tools back to London; but this rule does not seem to apply where the journeyman is dismissed in the middle of a job, for misconduct. *Read v. Dunmore*, 7 Car. & P. 588.

(u) 4th April, 13 Eliz.; and *vide* Act of Common Council, 9th October, 6 Will. & Ma.; 2 Rep. M. C. p. 202.

miles thereof, except he be admitted by the master and wardens; and also, that they shall have the search, survey, and government of the commonalty of the said mystery, and of their works and merchandize within those limits.

The masons in London and seven miles thereof are also an ancient company, and incorporated by charter of 17 Dec. 29 Car. II. with a power to make by-laws and to take cognizance of all defaults in the art or mystery of masonry: in pursuance of which charter, a set of by-laws regularly allowed and approved of, are in existence for the general regulation of the trade (*x*), but which do not seem to be acted upon at this day (*y*).

The tilers and bricklayers of London were incorporated by Queen Elizabeth (*z*), and a set of rules, ordinances, and constitutions were passed and allowed in 1570(*a*), for the general management and regulation of the trade; but there is no obligation on members of the trade to become free of the company (*b*).

Under an act of common council, passed 6 Will. & Mary (*c*), all plasterers within the City of London are required to be free of the Plasterers' Company, and the company have by their charters an extensive control over the trade, such as the regulation of trade prices, searching for defective wares, and making by-laws for the general conduct of the trade(*d*). There is in existence an old act of common council for the ordering of the companies of bricklayers and plasterers, by which it was ordained, that the bricklayers should not plaster with lime and hair, but with sand only, and that plastering with lime and hair should belong to the plasterers,

(*x*) See Rep. Court of Aldermen, (Chaplain, No. 83, Rot. 234).

(*y*) 2 Rep. M. C. part 2, p. 156.

(*z*) By charter, 3rd August, A. R. 10.

(*a*) 14th July, 13 Eliz.

(*b*) 2 Rep. M. C. part 2, p. 191.

(*c*) 19th October, 1694.

(*d*) The last price list issued by this company was in 1765. It is considered that the strict exercise of the powers of the company would, at this day, be productive of much good. 2 Rep. M. C. part 2, p. 227.

under a penalty of 40s. for every offence, and this was held valid by the Court of King's Bench (e).

By the charter of the Painter Stainers' Company (f), no person within the city or liberties, or four miles thereof, can exercise the art or mystery of a painter or painter stainer without a seven years' apprenticeship to some one of the said art or mystery; or until after being carefully and diligently examined, approved and allowed by the judgment and survey of the master, wardens, and assistants, to be good and proper workmen, under a penalty of £5; and by statute 1 Jac. I. c. 15. it is enacted, that no plasterer shall exercise the art of a painter in the city or suburbs, or lay any colour or painting whatsoever, unless he be a servant or apprentice to a painter, or have served seven years' apprenticeship to that trade, under a penalty of £5. But plasterers may use whiting, blacking, red ochre, &c. mingled with size only, and not with oil: and the Painters' Company are to have the regulation of common painters' work.

By act of common council, 11th July, 1612, all persons exercising the art or mystery of painting in the city, are compelled to bind their apprentices to the company; and by a more recent act (f), and by the by-laws (g) of the company, founded on the charter of Elizabeth, no persons within the city and liberties can lawfully occupy, use, or exercise the art, science, or mystery of painters, *alias* painter stainers, or any part thereof, or do or work anything thereunto belonging, or in anywise appertaining, unless he or they be free of the said company; and the company are invested with full power to search for defective workmanship, and generally to regulate and control the art or trade (h).

(e) *Bricklayers' v. Plasterers' Company*, Palm. 395; *ante*, p. 48.

(f) 19th July, 23 Eliz.

(f) 23rd June, 1767.

(g) See 2 Rep. M. C. part 2, p. 142.

(h) In pursuance of their authority, the company publish, every two or three years, lists of the trade prices of painters' work, according to the fluctuations in the prices of labour and materials; and not only

By act of common council of 6th February, 1754, it is enacted, that every person occupying, using, or exercising the art, trade, or manual occupation of a plumber, within the city and liberties, shall become free of the Plumbers' Company.

The company have, by their charter (i), a power to make by-laws for the regulation of the trade, and to search and inspect houses, shops, and warehouses, and other places where the art or trade of a plumber is carried on within the City of London, or seven miles thereof, as to the workmanship, weights, beams, and scales, lead, solder, and all other things whatsoever, in any manner concerning the said art, trade, or mystery, and to see as to the buying lead of suspected persons, and to fine defaulters; and no freeman is to make, sell, or amend any solder or weights, unless the same be first assayed and found to be true (k).

the London tradesmen guide themselves by it, but the price list is frequently applied for by tradesmen in Leeds, Liverpool, Manchester, and other great commercial towns; and it is stated as the custom of the trade, that a charge made by a painter to his employer could not be maintained beyond the price marked in the list, without a special contract. In other respects, the company do not seem to regulate the trade. 2 Rep. M. C. part 2, p. 148.

(i) 12th April, 9 Jac. I.

(k) When required by any freeman of the company, the beadle attends at the shop and premises of the freeman, and superintends the making of solder, which being all made and cast in bar, and the solder having been assayed by the beadle, the master and wardens attend at the shop and premises, and mark or seal the solder with the seal of the

company, *i. e.* a die impressed with the figure of St. Michael the Archangel, as directed by the charter. The assay consists in ascertaining the due proportion of the materials employed, and whether they are mixed at the proper temperature, upon which much of the goodness of the solder depends. Many assays, sometimes six or more, are taken before the beadle is satisfied with the alloy. The stamp, being a certificate that the article is duly prepared, adds to its vendibility. Foreign orders and commissions are given for it by the name of sealed solder, and it is much in request in the East and West Indies, in France, and in Russia; and it is much preferred throughout England, and little solder is made or sold, except that which is sealed by the company. 2 Rep. M. C. part 2, p. 163.

The paviours of London are an unincorporated fellowship, constituted by an order of the court of aldermen (*l*), but do not seem to interfere in the general regulations of the craft (*m*).

Besides these companies, there are other societies who formerly exercised a control over buildings and works of art in the metropolis, such as the marblers, glaziers, &c., but their powers at this day are completely dormant. Nearly every branch of these different trades, however, have private societies among themselves in the metropolis, which, not being recognized by law, are the causes of continual disputes between the masters and workmen; and there can be little doubt that the mutual advantage of themselves and the public would be most materially promoted, if the ancient incorporations were reformed on a plan which should make them available to the whole body of artisans, and thus free the latter from that illicit influence which it is at present always in the power of a few factious individuals to establish.

(*l*) 26th October, 19 Edw. IV.

(*m*) 2^d Rep. M. C. part 2, p. 259.

CHAPTER XVIII.

REGULATIONS OF THE STREETS, SEWERS, LAMPS, AND
AQUEDUCTS.

THE due regulation of these various departments of municipal police forms a most important portion of the duties of the civic government, the neglect of which is one of the chief causes of those frightful epidemics which have, at various times, ravaged and depopulated large cities.

By the common law, the crown was empowered to grant commissions for inquiring into the want of reparations of sea walls, ditches, gutters, sewers, &c. (a); and, as far back as the time of Edward I., we find a commission of sewers issued into London directed to the mayor and sheriffs (b).

(a) Reg. 127; F. N. B. 113; 4 Inst. 275; Bacon's Abr. tit. Court of Com. of Sewers.

(b) Rot. Parl. 35 Edw. I.; 4 Inst. 275; Fitzstephen, whose early description of London we have so often quoted, compares the common sewers and aqueducts existing in his time in this city to the celebrated aqueducts at Rome; but in this, as in other parts of his treatise, he seems to have been very largely indebted to his imagination. The Roman *cloacæ* are recorded to have been large enough to allow of a wagon loaded with hay to pass underneath, and vessels actually to sail in them. Plin. Hist. Nat. XXXVI. 13. The sewers in London pre-

vious to the great fire, however, seem to have been very inadequate to the wants of the population, and this was no doubt a main cause of the constant recurrence of the plague. At present they extend in the city alone upwards of fifteen miles in length, whilst the length of the ways under the superintendence of the commissioners for paving, lighting, and cleansing, has been estimated at nearly fifty miles, 2 Rep. M. C. p. 174. The management of the *cloacæ* at Rome was first entrusted to the censors, as in London to the ordinary magistrates, but was in the progress of improvement transferred to a distinct body called the *curatores cloacarum*, (Heineccii An-

By statute 23 Hen. VIII. c. 5, made perpetual by 3 & 4 Edw. VI. c. 8, these commissions are directed to be issued by the lord chancellor, treasurer, and two chief justices for the time being, or any three of them; and the statute 3 Jac. I. c. 14, declares that all walls, ditches, banks, gutters, sewers, gates, causeways, bridges, streams, and watercourses, within two miles of London, having their fall in the Thames, shall be subject to the commission of sewers, and to all statutes made for sewers, and to all penalties therein contained.

Various local statutes for the regulation of the sewers in the metropolis have since been passed, and a plan lately proposed to make similar provisions for all large towns.

The London Commissioners of Sewers.

The 19 Car. II. c. 3, empowered the court of common council to declare which should be accounted by-lanes, streets, or lanes of note, and principal streets—s. 6; and to prohibit such trades as they should judge noisome, or perilous in respect of fire, to be used in the principal streets—s. 21; and the number and places of all common sewers, drains and vaults within the city and

tiq. Rom. Syntagma, lib. 2, tit. 3, s. 6,) answering to the commissioners of sewers, created by the act for rebuilding the City of London after the fire, 19 Car. II. c. 3.

The metropolis and the adjacent districts comprised within a circle of ten miles from the post office, are now divided into seven trusts or boards of commissioners, each possessing a separate and independent jurisdiction within its own limits, *viz.* :—

1. The Commissioners of Sewers for the City and Liberties of London, under 11 Geo. III. c. 29.

2. Ditto for Westminster and part of County of Middlesex, under 47 Geo. III. sess. 1, c. VII.

3. Ditto for Holborn and Finsbury

and another part of same county, under 18 Geo. III. c. 66; 54 Geo. III. c. CCXIX.

4. Ditto for Regent Street, under 53 Geo. III. c. XXXVIII.

5. Ditto for the River Ravenshorne in Kent to the Ember branch of the River Mole in Surrey, under 49 Geo. III. c. CLXXXIII.; 50 Geo. III. c. CXLIV.; and 53 Geo. III. c. LXXIX.

6. Ditto for Blackwall, Poplar, and Stebunheath; and

7. Ditto for Tower Hamlets, which are regulated under the above statute of 23 Henry VIII. c. 5. Besides those belonging to the several dock companies.

liberties of London (*c*), were to be designed and set out by such and so many persons as the common council should appoint under their common seal (*d*).—s. 20.

Powers of the Commissioners.—These commissioners of sewers were subsequently declared to have the same powers as the commissioners of sewers in any other part of the kingdom (*e*); and by the 11 Geo. III. c. 29 (*f*), they are invested with the sole power of ordering, designing, making, enlarging, widening, deepening, raising, altering, removing, repairing, cleansing and scouring all common sewers, drains and vaults; and of paving, cleansing, and lighting the several streets, lanes, squares, yards, courts, alleys, passages, and places within the said city and liberties; and they are authorized to cause such and so many new sewers, drains and vaults, as they think proper, to be dug, and made in, along, or across any of the said streets, &c.; and also any of the sewers, and public drains, and vaults therein, to be enlarged, widened, deepened, raised, altered, removed, repaired, cleansed, or scoured, when and as often as they think fit, and to cause all or any of the said streets, &c. to be new paved, or repaired, when, and as often, and in such manner, and with such materials, as they think fit (*g*)—s. 13; and

(*c*) The jurisdiction of the London commissioners of sewers extends over the whole of the city, but they do not pave or light the precincts of Bartholomew, Duke's Place, or Bridewell, and have no concern whatever with Southwark, 2 Rep. M. C. p. 174; the powers of the commissioners are further extended by the 4 Geo. IV. c. CXIV. to Broker's Row, Moorfields; out of the ordinary city limits.

(*d*) Made perpetual by 22 & 23 Car. II. c. 17, s. 20. The 11 Geo. III. c. 29, directs that the recorder and common serjeant should be among the number; and the board

now consists, besides these officers, of the twenty-six aldermen, all the deputies, and one commoner from each ward, 12 S. O., December 8, 1788; amended 15th March, 1827; and 29th Oct. 1840. A fresh commission under the common seal issues every year, 2 Rep. M. C. p. 51.

(*e*) 7 Anne, c. 9.

(*f*) Explained and amended by 33 Geo. III. c. 75; and 4 Geo. IV. c. CXIV.

(*g*) With respect to new streets, the commissioners are directed to pave them on one half of the estimated expense being paid by the owners, 4 Geo. IV. c. CXIV. s. 28,

for such purposes they may, from time to time, cause to be dug, carted, and carried out of, or brought into the said streets or places, or any of them, such gravel, stones, bricks, and other materials, as they judge necessary, and may likewise cause the ground thereof to be raised or lowered, the course of the channel running in, into, or through the same, to be turned or altered, and the water pipes lying underground to be taken up and new laid, in such places, manner and form, as they the said commissioners may judge best; and may cause such posts, bars, and chains as they think useless or inconvenient, to be taken away or removed; and likewise all steps, bulks, show-glasses, show-boards, balconies, windows, window

and they are also required to pave parts of the sites of houses laid into any street previously paved by them, for widening and improving it, *id. s.*

30. No pavement in the carriage or footways of *Aldgate High Street*, between *Whitechapel Bars* and *Leadenhall Street*, or *Leadenhall Street*, *Cornhill*, *Mansion-House Street*, the *Poultry*, *Cheapside*, *St. Paul's Church Yard*, *Ludgate Street*, *Ludgate Hill*, or *Fleet Street* to *Temple Bar*, so as to include the whole line of street from *Whitechapel Bars* to *Temple Bar* aforesaid; *Gracechurch Street*, *Fish Street Hill*, and *London Bridge*, so as to include the whole line of street from the north end of *Gracechurch Street* to the south end of *London Bridge*, aforesaid; *Queen Street*, *Cheapside*, from the north end thereof to the south end of *Blackfriars Bridge*, *Upper and Lower Thames Street*, *Lombard Street*, the *Old Bailey*, between the end of *Fleet Lane* and *Ludgate Hill*, *Barbican* and *Long Lane*, between *Red-cross Street*, crossing *Aldersgate Street* to *Smithfield*, must be taken up, or laid down, or repaired,

except between the hours of six o'clock P. M. and 8 A. M.; and no more pavement must be taken up in any one night and morning for the purpose of repairs or alterations, or any other purpose, than can be completely repaired and altered, or the stones thereof replaced, so that persons or carriages may safely and conveniently pass over the same before 8 o'clock on the subsequent morning after it has been taken up, under a penalty of not exceeding 20*l.*—*s.* 31; but for the purpose of repairing sewers, or any other purpose which cannot be completed within that time, an order in writing may be made by the commissioners, extending the time for keeping the pavements open—*s.* 32. The next section extends the provisions as to water companies to gas companies; and the commissioners are authorized to direct pavements injured by water or gas pipes to be repaired at the expense of such companies, and similar provisions made as to mistake in the ownership of the pipes, or as in *s.* 25 of the 11 Geo. III. c. 29, *post*, p. 298, note (c).

frames, and stall-boards, encroaching upon or extending over the footways; and also all steps and doors opening or leading from the footways into vaults or cellars, to be taken away, removed or altered (*h*).—s. 13.

The commissioners are empowered to take down and remove all signs or other emblems used to denote the trade, occupation or calling of any person or persons, sign-posts, sign-irons, balconies, pent-houses, show-boards, spouts and gutters, projecting into any of the said streets, &c., and all other encroachments, projections and annoyances whatsoever, within the said city and liberties (*i*), and cause the same or such parts thereof as they

(*h*) The commissioners of sewers meet every Tuesday in the year except in the month of August; seven make a quorum; the ordinary number in attendance is from twenty to thirty. They sit to hear complaints and receive applications under the act of parliament. They meet alternately, morning and evening, 2 Rep. M. C. p. 174. The usual form of application is by way of petition, which is in most cases referred to the commissioners of the ward, who report on the application to the next court. Permissions are entered in the books of the commissioners. No written permission is given to the applicant; whenever any application is made for opening communications with drains, the commissioners always employ their own surveyor to do the work, and charge the expense to the party. Formerly the court of aldermen were in the habit of referring presentments by the ward inquests to the commissioners, but of late this has not been done, *id. ib.* The commissioners are invested with full powers for compelling the attendance of defaulters and witnesses,

and to examine them on oath.—33 Geo. III. c. 75, ss. 12, 13, 14.

(*i*) The powers of the commissioners under this section are extended by the 24th section of the 4 Geo. IV. c. CXIV. to *Holborn, the Minories, and Aldersgate Street* without the liberties of the city. Under the 72d section of the 57 Geo. III. c. XXIX. *post*, p. 315. Mr. Ballantine, sometime back, decided against a pawnbroker's sign being considered a nuisance, notwithstanding it projected over the footway, unless it obstructed the circulation of light or air, or was inconvenient or incommodious.—Charnock's Police Guide, p. 176, note (*h*). The 1st charter of Charles I. authorizes citizens to expose and hang in and over the streets and ways, and alleys of the city and suburbs, signs and posts of signs affixed to their houses and shops, for the better finding out such citizens' dwellings, shops, arts or occupations, without impediment, molestation, or interruption. This charter is, we have seen, confirmed by act of parliament, *ante*, p. 7, and the present statute does not ex-

think fit to be affixed or placed on the fronts of the houses, shops, warehouses, or buildings to which they belong, and return to the owners so much as shall not be put up again, or otherwise made use of in such alterations; and any person hanging, placing, erecting or building any sign, sign-post, or other post, sign-iron, balcony, pent-house, show-board, spout, gutter, or other projection, obstruction, or annoyance, is subject to a penalty of £5, and twenty shillings a day for continuing the same.—s. 15. Cranes, however, may be used, provided that, when not in actual use, they are turned and kept close to the walls (*k*).

Any common stage waggon, or other waggon, or any cart, dray, or other carriage, for the purpose of loading and unloading, standing, or continuing in any of the said streets, &c., above the space of one hour at one time, or any cart, waggon, dray, or other carriage placed or suffered to stand athwart or across any such street, &c. for loading or unloading, or any other purpose, or standing or continuing in any part of such streets, &c. longer than is necessary for loading or unloading (*l*), or any goods, materials, or things whatsoever, laid or placed, or left in any such street, &c. so as to obstruct the free passage thereof, may be seized by the commissioners or their officers, and removed to the common city pound, called the Green Yard, to be there kept until claimed, and a fine of twenty shillings, and expenses of removal and keeping paid; and in default of the same being claimed for three days, the commissioners are authorized

clude such signs unless they are actual obstructions.

(*k*) The 33 Geo. III. c. 75, s. 10, inflicts a penalty of 20s. on butchers or other persons dealing in meat (out of the public markets on the south side of Aldgate and High Street) hanging out meat or offal beyond the

story parts of their houses or shops, or suffering blood to be thrown or conveyed into any of the said streets; and this last offence is further punished under the police act, *ante*, p. 154.

(*l*) See *ante*, p. 150.

to order the same, or a competent part, to be sold to pay the penalty and expenses.—s. 17.

Erecting Posts.—Persons erecting or building any posts, bars, rails, hounds, or other things, by way of inclosure, for the purpose of making mortar, or depositing bricks, lime, or other materials (*m*), for building or repairing any house or houses, building or buildings, or other works within the said city and liberties, in any other manner, or suffering the same to remain for any longer time than is necessary for such building or repairs, or laying any rubbish within such enclosure, or in any public street, passage, or place within the said city and liberties, or causing the same to be done, on complaint thereof made to the said commissioners by any two householders of the said city and liberties, and the truth thereof ascertained by the said commissioners upon view, or other due proof of the same, are liable for every offence to a penalty of twenty shillings; and the commissioners may cause such enclosure or erection to be pulled down and removed, and the materials and other valuable things therein to be removed to the Green Yard, and there detained until payment of the expenses; and if the same be not redeemed within eight days, they may be sold to pay the penalty and expenses. The rubbish may be removed wherever the commissioners think proper, and any person laying the same within or on the outside, or near to such enclosure, or in any public street, passage, or place within the said city or liberties, is liable to a penalty of twenty shillings and the expenses of removal.

The 19th and 20th sections inflict a penalty of

(*m*) The 33 Geo. III. c. 75, s. 3, inflicts a penalty of 5*l*. on persons unauthorized by the commissioners, fixing or placing any bars, chains, posts, or other permanent obstructions across, or in any of the said streets, &c. so as to prevent, ob-

struct, straighten, or render less convenient, the passing and repassing of carriages, horses, and foot-passengers, and the obstruction may be removed by the commissioners at the offender's expense.

forty shillings on persons slaking lime in the streets, or any house therein, except in the yards or cellars of houses new building or repairing, or of the dwelling houses of bricklayers or plasterers, before seven o'clock in the summer, or eight o'clock in the winter, so that the steam of such lime be conveyed into and through the chimney.

Any person or persons carrying or removing, driving, rolling or drawing any bier, wheel, empty cask, sledge, wheelbarrow, or other carriage, or riding, leading, or driving any horse, ass, mule, or cattle, coach or carriage, along any part of the foot pavements (n), may be seized by any person witnessing the same, and with the assistance of any other persons, without warrant, secured and conveyed before some justice of the peace for the said city, who upon conviction on the oath of any witness may inflict a penalty of ten shillings for the first offence, twenty shillings for the second, and forty shillings for every subsequent offence.—s. 21.

Names of Streets.—The commissioners are directed to have the name of each street, &c. painted, engraved, or described in stone, or otherwise, in a conspicuous part of one or more houses or buildings at or near each end, corner, or entrance of each street, &c.; and every house, shop, or warehouse, marked or numbered in such manner as they may judge proper for distinguishing the

(n) And see *ante*, p. 150. The 33 Geo. III. c. LXXV. requires the driver of every waggon, cart, dray, caravan, sledge or truck (except in cases of horses going abreast, and of carts drawn by one horse only, guided with leather reins of sufficient length by the driver sitting in or upon such cart), to hold in his or her hand, a rope, strap, or thong of leather, of sufficient strength, not exceeding four feet in length, affixed to the bit of

the bridle or headstall of the halter of the shaft-horse, &c. under a penalty of 5s. for the first offence, 10s. for the second, and 20s. for every other, and in default thereof the offender may be seized without warrant, and given in charge of a constable, and the like penalties are inflicted on drivers of waggons, &c. with two or more horses, or other beasts of draught, riding on either of such horses, *id.* s. 20.

same, and a penalty of forty shillings is inflicted for wilfully destroying, pulling down, obliterating or defacing such names, marks, or numbers.—s. 22.

Altering the form of the pavement, or the streets, &c., or in any way encroaching thereon, or breaking up the foot or carriage way, without authority of the commissioners (o),

(o) Except for the purpose of taking up, laying down, or repairing any waterpipe or waterpipes, under the same, 33 Geo. III. c. 75, s. 2. The supply and distribution of water in a large city (says Dr. Arnott), "particularly since the steam engine was added to the apparatus, approaches closely to the perfection of nature's own work in the circulation of blood through the animal body. From the great pumps or high reservoirs, a few main pipes issue to the chief divisions of the town. These send suitable branches to every street; the branches again divide for the lanes and alleys; and at last into every house a small leaden conduit rises, which, if required, carries its precious freight into the separate apartments, and yields it there to the turning of a cock; and so admirably complete and perfect is this counter-system of sloping channels, that a heavy shower may fall, and, after washing and purifying every superficial spot of the city, and sweeping completely all the subterraneous passages, within the space of an hour, it may be again collected in the river passing by. It is the recurrence of this almost miracle of extensive, sudden, and perfect purification which has made London the most healthy, although the largest city in the world."—El. of Physics, vol. 1, p. 272, 3d ed. For many ages the inhabitants of London were

indebted for all the water required for domestic purposes to the labours of water-carriers, who fetched it from the Thames, the Fleet, Walbrook, &c., or for the more privileged classes, from wells sunk in the gardens of religious houses and elsewhere, as Bridewell, Holywell, Clerkenwell, &c. In 1236, water was first brought into the metropolis in leaden pipes from the village of Tyburn, and afterwards from Hampstead, Paddington, Marylebone, Islington, Hoxton, Hackney, and various other places. By the 35 Hen. VIII. c. 10, the civic authorities were empowered to enter into the grounds as well of the king as of every other person where they should find any springs, and there dig pits, and ditches, erect heads, lay pipes, and make vaults, and do all things necessary for the conveyance of water to the city. The supply thus obtained was distributed to the public by means of conduits or leaden cisterns raised in the middle of the principal streets, the largest and most ancient of which stood in *Westcheap*, and was erected as far back as 1285.—*Strype's Stow*, Lib. 1, p. 26. The profits of this monopoly in the supply of water were constituted one of the funds appropriated for the discharge of the orphans' claims, mentioned *ante*, p. 114. The Paddington, Hampstead, and Marylebone springs still exist, though,

subjects the offender to a penalty of £5, over and above the expense of relaying and reinstating the same, accord-

owing to the different means now adopted for the supply of water, they are of very minor importance to the public. The Paddington spring has been sold to the bishop of London, under the 52 Geo. III. c. CXCI., and the produce of the purchase money invested for the benefit of the orphans' fund. The other springs are leased for twenty-one years. The produce of the whole being 312*l.* 12*s.* 2*d.* annually.—2 Rep. M. C. p. 216. Should the now strongly advocated project of supplying London with water from Artesian wells be practically carried into effect, the powers of the corporation under the above statute might be very advantageously exercised. In 1582, Peter Morrys, a German engineer, presented a scheme to the court of aldermen, for supplying the city with Thames water, by a mill worked by the waterfall at the return of the tide under London Bridge. Northouck's Hist. of London, p. 137; and see a description of the works in Desagulier's Philosophy. Four arches of the bridge were successively assigned to the projector and his successors, for the purpose, by various indentures under the city seal, dated respectively 30th May, 23 Eliz.; 24 Nov. 1701; 5th Aug. 1761; and 8th July, 1767, for long terms of years, in pursuance of which a company was formed, called the *London Bridge Waterworks Company*, under a deed of settlement dated 29th June, 1703, and continued in existence till the year 1822, when the works were destroyed, and the powers of the proprietors transferred to the

New River Company, by 3 Geo. IV. c. CIX. The New River Company were first incorporated in 1619, by letters patent (21 June, 17 Jac. I.). The statute 4 Jac. I. c. 12, empowered the city of London to make the necessary cut for bringing water from any part of Middlesex or Herts; but this most invaluable undertaking was, after an ineffectual attempt on the part of the powerful and wealthy corporation of London, abandoned to the more enterprising genius of the celebrated Sir Hugh Middleton, who, after embarking his whole fortune in the matter, and receiving scarcely any return for it during his life, was ultimately enabled to transmit to his posterity the invaluable monopoly of a supply of pure water to the inhabitants of the metropolis. The New River Company, with that of the Chelsea Waterworks, formed in 1723, the London Bridge Company, mentioned before, and two smaller bodies, since extinct, exclusively supplied the whole of the north side of the Thames with water, until the year 1810, when the three new companies, the East London (under statutes 47 Geo. III. sess. 2, c. LXXII., 48 Geo. III. c. VIII., amended by 10 Geo. IV. c. CXVIII.), the West Middlesex (under the 46 Geo. III. c. CXIX., 50 Geo. III. c. CXXXII., and 53 Geo. III. c. XXXVI.), and the Grand Junction (by statutes 51 Geo. III. c. CLXIX., amended by 56 Geo. III. c. IV., and 59 Geo. III. c. CXI., 7 Geo. IV. c. CXL., and 5 & 6 Will. IV. c. XCV.), were established; and these five companies, with the Lambeth

ing to the commissioners' directions—s. 23 ; but on the complaint in writing of any two householders, to the commissioners, of any defect, or want of repair in any of the pavements of any of the said streets, &c., the commissioners are compelled to have the same inspected by their surveyor, and on the same being reported defective, unless through a defect in the water-pipes under the same, the commissioners must give orders to their contractors or paviours to repair the same ; which order must be complied with within four days after the receipt thereof, under a penalty of twenty shillings per day (*p*)—s. 24.

When any pipe or pipes, belonging to any of the water companies, lying underground in any street, &c., happen to break, burst, or decay, so as to require reparation, the commissioners' surveyor must give notice, in writing, to the paviour, or to the clerk or secretary, if there be no regular paviour—s. 26, of the water company to whom he apprehends the pipe to belong ; and such paviour is required to take up the pavement, and open the ground at or near the place where such reparation appears to be wanting, and if the pipe so broken, burst, or decayed, is then found not to belong to the water company to which such paviour belongs, he must give a written notice to

(established by 4 & 5 Will. IV. c. VII.), Vauxhall (under 45 Geo. III. c. CXIX., 53 Geo. III. c. CLV., and 4 & 5 Will. IV. c. CLXXVIII.), and Southwark Waterworks (under the 4 & 5 Will. IV. c. LXXIX.), for the southern side of the Thames, have still the exclusive supply of the whole of the metropolis with water, and the five former divide the town into as many districts, binding themselves under severe penalties not to encroach on each other's estates. Report of Commissioners on the Supply of Water in the Metropolis, 1837. The 3 Geo. IV. c. CIX., which au-

thorized the removal of the London Bridge Waterworks, empowered the New River Company to cut the bank of the Thames for the purpose of laying pipes, and to lay down mains and other pipes in any of the streets and other public places in London or Southwark, or any other parts, subject to the regulations of the Pavement Acts. This company have, therefore, a power which no other water company has, to take up the pavement without leave of the commissioners. 2 Rep. M. C. 174.

(*p*) See *post*, pp. 310.

the paviour of the proper company to whom the pipe does belong, and receive from the latter satisfaction for his trouble. And the paviour of the company owning the pipe is required to repair it, and fill up the ground, and ram down the same, within two days after notice, and report what has been done to the paviour or contractor of the commissioners, under a penalty in each case of £5; and the like penalty is inflicted on the owners of other pipes, for not repairing the same when needful, and reporting the same to the clerk of the commissioners. And on any pavement being broken or taken up for the purpose of making, repairing, or altering any vault or drain, or for any other purpose, the person causing the same to be done, must, as soon as the nature of the work will permit, cause the ground to be filled up, and notice, in writing, given to the commissioners' clerk, under a penalty of forty shillings; which notice must be forwarded by the clerk to the commissioners' paviour, or contractor, within two days, and the pavement relaid or repaired by the latter, within two days more, under a penalty of twenty shillings per day for omission.—s. 25.

The paviour of the water companies within the city and liberties must, within three days of their appointment, under a penalty of twenty shillings, give notice to the clerk of the commissioners of their names and places of abode, company, and district; and such clerk must, within the same period, and under the same penalty, give notice to the paviour of the water companies, of the names, and places of abode, of the pavours, or contractors, of the commissioners.—s. 27. The expenses of relaying or repairing the pavement, in order to repair the water pipes, to be paid by the respective water companies, or other owners; but if for the purpose of repairing, cleansing, or emptying any sewer, public drain, or vault, or altering the position of the water pipes, the expenses must be paid out of the sewers rate.—ss. 28, 29.

For the more easily obtaining water in cases of fire (*q*), the several water companies who supply the inhabitants

(*q*) The regulations for the prevention of fire in London ought as much as possible to be well understood, in order to enable every one, in an emergency, to at once apply for assistance in the proper quarter. It will not be therefore useless in this place to describe the different local provisions in London against the awful ravages of the devouring element. By an Act of Common Council, dated 15th November, 1667, for the prevention of fires, (Jor. Peake, No. 46, fol. 976; Strype's Stow, lib. 1, p. 237; and North. Hist. of London, p. 231,) the city was divided into four divisions, *viz.* :—

East part, the wards of *Portoken, Aldgate, Tower, Billingsgate, Bridge, Langbourne, and Lime Street*. West—*Farringdon Within, Farringdon Without, Castle Baynard, Cheapside, and Aldersgate*. North—*Cornhill, Broad Street, Coleman Street, Bassishaw, Bishopsgate, and Cripplegate*; and South—*Queenhithe, Bread Street, Vintry, Cordwainer, Dowgate, Walbrook, and Candlewick*; each of which were to be provided with 800 leather buckets, fifty ladders of different sizes, from twelve to forty-two feet in length, two brazen hand-squirts to each parish, twenty-four pickaxe sledges, and forty shod shovels.

2. Each of the twelve companies were directed to provide themselves with an engine, thirty buckets, three ladders, six pickaxe sledges, and two hand-squirts, to be ready upon all occasions. And the inferior companies, such a number of small engines and buckets, as should be allotted them by the lord mayor and court of al-

dermen, according to their respective abilities.

3. The aldermen passed the office of shrievalty, to provide their several houses with twenty-four buckets, and one hand-squirt each; and those who have not served that office, twelve buckets and one hand-squirt each.

4. And for the more effectual supplying the engines and squirts with water, pumps were directed to be placed in all wells; and fire-plugs in the several main-pipes belonging to the New-River and Thames Water-works.

5. The several companies of carpenters, bricklayers, plasterers, painters, masons, smiths, plumbers, and paviours, annually, for each corporation, to elect two master-workmen, four journeymen, eight apprentices, and sixteen labourers, to be ready upon all occasions of fire, to attend the lord mayor and sheriffs for extinguishing the same.

6. All the workmen and labourers belonging to the several water-works within the city, sea-coal meters, Blackwell Hall, Leadenhall, ticket, package, and other porters, to constantly attend the lord mayor and sheriffs in such services. With various other minute regulations, too numerous to be here inserted.

The Building Act further requires the churchwardens and overseers of every parish or precinct within the bills of mortality, at the charge of the parish, to make and fix, and keep in repair, upon the mains and pipes belonging to any water-works whatsoever, so many stop-

of the city with water, are required under a penalty of 40s. from time to time within seven days of their appoint-

blocks of wood, with a wood plug, or so many fire-cocks to go into each main or pipe, and to be placed at such distances in every street as they shall direct; the top of every stop-block to be even with the pavement. And a mark is required to be fixed on the house nearest to the place where the stop-block is fixed, and an instrument kept there to open the plug; and whenever the owners of the water-works change their mains and pipes, the owner of such main is required, at his own cost, to fix the same where the churchwardens direct, and in such cases, the instrument, key, or pipes must be removed to the opposite house, and a like mark affixed thereon, 14 Geo. III. c. LXXVIII.

—s. 74; and each parish or precinct (or united parish—s. 79) is also required to keep in good repair one large engine and a hand engine, and one leather pipe at least, with a socket to correspond with the plug or fire-cock, and a stand or suction pipe; and also three or more ladders for escape, under a penalty of 10l.

—s. 75. The firemen are exempted from being impressed, provided their names are registered or entered with the secretary of the admiralty. To prevent fraud in cases of insurance, the money insured on premises destroyed by fire, may upon request of any persons interested therein, or on any grounds of suspicion, be laid out by the insurance office, in rebuilding or repairing the place burnt, unless security be given within sixty days by the owners for that purpose, or the dispute between the contending parties be settled within such time.

—s. 83. A covenant to insure premises under this act, runs with the land, and therefore binds the assignee as well as the original lessee, *Vernon v. Smith*, 5 B. & A. 1.

On the breaking out of any fire within the limits, all constables and beadles, upon notice thereof, are required immediately to repair to the place with their staves and other badges of authority, and be aiding as well in extinguishing the fire, and causing people to work at the engines, as also in preventing goods being stolen, and apprehending such as they find stealing, and assist the inhabitants in the removal of their goods.—s. 85. In pursuance of this clause, the regulations of the commissioners of police direct the superintendent of the division upon any alarm of fire immediately to repair to the spot, and take the entire control of the police force that may be assembled, sending, if necessary, for those who are off duty, and giving immediate notice to the several fire-offices. As the police are most likely to be useful in procuring a free scope for the firemen's exertions, and the parties more immediately interested, they are directed to clear the street in the immediate vicinity of the fire, of all persons not actively and usefully employed, taking care that all the adjoining streets, as far as may be practicable, are kept clear of obstructions by crowds, or carriages, waggons, carts, &c., that the engines may not be delayed on the road. Every assistance possible is directed to be given to the removal of property, conformably with the wishes

ment of any turncock or turncocks, to give notice in writing to the commissioners of their respective names

and suggestions of the proprietors; and if desired, such property may be conveyed to the nearest police station or residence, to be there placed under the protection of the police. The superintendent is also directed to collect upon the spot all the information he can obtain relative to the cause of the fire, which, together with the circumstances attending it, the conduct of the police under his orders, and the time they were employed, he must report fully as soon as may be to the commissioners. The turncock whose water first comes into the main at any fire is directed by the Building Act to be paid 10*s.*; the engine keeper first bringing a parish engine, if in good order and complete, 30*s.*; the second engine, 20*s.*; and the third engine, 10*s.*, to be paid by the churchwardens, by order of an alderman or justice, 14 Geo. III. c. LXXVIII. ss. 76, 77; and in case of a chimney only being on fire, such sum to be repaid by owner or occupier of house or apartment where the same originated—s. 78.

The most efficient means, however, for the prevention of fires in the metropolis is the force known by the name of The Fire Brigade, or The London Fire Engine Establishment, formed by the general contribution of the different insurance offices. The number of these offices in London is fifteen, besides three branch offices of country establishments; and a representative of each office, with the exception of the County and West of England, constitute a committee of eighteen, who have the entire con-

trol of the invaluable force in question. Report of Committee of House of Commons on Chimneys, 1840, Evidence of Mr. Braidwood, and Mr. Stevens.

The following are some of the regulations adopted by the committee:—The superintendent, appointed by them, has the general control over the force; and the town is divided into five districts—with a foreman, engineers, and firemen, and engines belonging to each; and the men are clothed uniformly, distinguished by numbers corresponding with their names in the books, and regularly exercised in the use of the engines, and in such other duties, as the committee or superintendent direct, their whole time being devoted to the service; and most minute regulations are laid down for the government of the force, and as to their hours of attendance, lodgings, and mode of service, &c. One third of the men are required to be constantly on duty at the different engine-houses, night and day; and the whole are liable to be called up for attendance at fires, or for any other duty. In general, it is arranged as follows, *viz.*—

If a fire happens in District A, the whole of the men and engines of that district are immediately to repair to the spot, at the rate of not less than seven miles an hour; two thirds of the men, and one of the engines from each of the Districts B and D must also go, and one third of the men from each of the Districts C and E; and so, *vice versa*, in cases of fire in any of the

and places of abode, distinguishing the districts to which they respectively belong; and the commissioners are required to print and distribute amongst the inhabitant householders a list of such turncocks.—s. 30.

The commissioners are empowered to cause the streets to be watered as often as they think fit, and to cause wells to be dug and sunk, and pumps erected, in any place they think proper, and to remove such pumps, and defray the expenses from out of the sewers rate.—s. 31.

The commissioners are empowered to cause moveable or fixed dust boxes, dust holes, or conveniences for the deposit of dust or ashes for the scavengers or rakers (*r*),

other districts; and if the fire happen on the boundary of a district, and it is doubtful to which district it properly belongs, the whole of the engines and men of the two adjoining districts must instantly repair to the spot, and one third of the men of the three remaining districts; and, in cases of emergency, the superintendent may call in such additional force as may be required. The engines of the establishment are not to be taken to alarms of chimneys on fire, except it be absolutely necessary; but the whole of the men must be at all times ready to appear at any place required, for exercise or any other purpose, and be ready (whether on duty or not) to execute whatever orders they may receive in relation to the establishment from the engineers, foremen, or superintendent.

The superintendent is required to make a report of every fire immediately, or before ten o'clock on the next morning after the fire is extinguished, to those offices interested in the fire, and also to their surveyors

of buildings and stock; and a daily report to each office of all fires which have happened, according to a printed form given him for that purpose.

(*r*) The 33 Geo. III. c. CLXXV. ss. 4, 5 and 6, prohibits all persons except the contractors for cleansing the streets, &c., or their servants, or the owners (applying the same to their own use) and not for sale, from collecting, gathering, or receiving any dust, dirt, cinders, or ashes, from any premises in the said streets, &c., under a penalty of not exceeding 20s., to be recovered by seizure of the person or implements of the offender at the time of the offence, or from the owner of the horses, carts or other implements employed, if the real owner cannot be found. See *post*, p. 313, note (*d*). The scavenging of the streets is all done by contract, for which purpose the city is divided into fourteen districts. The scavenging which now costs 4000*l.* per ann., used to bring to the commissioners a profit of 5000*l.* per ann. This difference is said to arise from the fall of price in small coal; the

to be erected where they think fit, and any person depositing their dirt, dung, or filth, other than dust or ashes, or depositing the same in the streets, &c., is liable to a penalty of 10*s.*—*s.* 32; and by the next section, every householder is required, under a penalty of 5*s.*, once every day, before ten o'clock in the forenoon, to cause the footway all along the front of his house or other tenement to be scraped, swept, and cleansed (*s.*)—*s.* 33.

For the better lighting the said streets, &c., the commissioners are authorized to cause such and so many lamps (*t.*) to be set up in such places within the said city

street mud being formerly bought for burning with bricks. 2 Rep. M. C. p. 174.

(*s.*) The Police Act further requires every occupier to keep sufficiently clean all adjoining footways and watercourses; and in case of any tenement being empty, the owner is deemed such occupier. *Ante*, p. 155.

(*t.*) In compliance with ancient custom (see Art. of Wardmote Inquest, Priv. Lond. 384; Calthorpe's Customs, pp. 160, 202), it was enacted by the statute 2 W. & M. c. 8, that housekeepers in the city of London, and within the bills of mortality, whose houses adjoin to the streets, should hang out lamps, from the time it grows dark till twelve o'clock at night, from Michaelmas to Lady-day, or pay for lamps, under the penalty of 2*s.* for every default, &c. The corporation had the monopoly of a sort of lamp, called the convex lamp, the profits of which, as well as of the conduits, were among the funds set apart for the satisfaction of the orphans' claims before alluded to, *ante*, pp. 114, 298, note (*o.*); but the improvements which have since taken place in the supply of artificial light by

means of gas, have completely superseded the whole of this branch of the ancient system of police.

The gas companies in London, are the *Chartered Gas Light and Coke Company*, established under the statutes 50 Geo. III. c. CLXIII., 54 Geo. III. c. CXVI., 56 Geo. III. c. CLXXXVII., 59 Geo. III. c. CXX., and 4 Geo. IV. c. CXIX.; *City of London*, 57 Geo. III. c. XXIII.; *Poplar*, 1 & 2 Geo. IV. c. LXXIV.; *South London*, 1 & 2 Geo. IV. c. LI.; *Whitechapel*, 1 & 2 Geo. IV. c. LII.; *Imperial*, 1 & 2 Geo. IV. c. CXVII., 4 Geo. IV. c. XCV., 10 Geo. IV. c. XII.; *Ratcliffe*, 4 Geo. IV. c. XCVIII.; *Phenix*, 5 Geo. IV. c. LXXVIII.; *Independent*, 10 Geo. IV. c. CXVIII.; and *British*, 10 Geo. IV. c. CXXVII. The various peculiar powers and privileges of these companies under their several acts of parliament, are too lengthy to notice here, but they are all invested with power to break up the pavements and soil of the streets, for the purpose of laying down pipes, &c., provided it be done in a workmanlike manner. They are obliged to remove pipes from private houses, when tenants

and liberties, and to be placed in such manner and at such distances as they judge necessary ; and to order and direct at what time the lamps shall be lighted, and how long they shall continue lighted ; and from time to time to give such other orders and directions as they think needful.—s. 34. Any person wilfully taking away, breaking, or throwing down, or damaging any such lamp, or wilfully extinguishing the lights, or damaging the irons or other furniture thereof, may be seized by any person witnessing the same, assisted by any other persons whatsoever, and delivered without warrant into the custody of a peace officer, in order to be secured and conveyed before some justice of the peace of the city, who is authorized to inflict a penalty of 20*s.* for every lamp, and compensation for the damage ; or if the damage be not wilful, then compensation is to be made only for the damage done (*u*).—s. 36.

Lamps put up in any of the said streets, &c. by private persons, are equally under the regulation of the commissioners.—s. 37.

The property (*x*) in the sewers and public drains and

quit, if required. When gas is found to escape from pipes laid down by them, they are obliged immediately to repair the defect, at their own expense, and are liable to a penalty of 5*l.* a day for every day suffered to elapse after receiving notice. They must remove nuisances, on receiving notice, under the same penalty. Pipes, &c. cannot be laid down in private houses without permission. Since the introduction of gas the commissioners have contracted with private companies for lighting the city. The two coal gas companies light the whole of the city. The annual expense of lighting the city with oil used to be about 9000*l.* ; the gas-lighting is all done for less than 10,000*l.* The

gas companies keep the pipes in repair, and make the communications. The lamps belong to the commissioners. 2 Rep. M. C. p. 174.

(*u*) The Police Act, we have seen, inflicts a penalty of 40*s.* on the silly and mischievous practice of passengers wilfully putting out the street lamps at night, *ante*, p. 152.

(*x*) This clause is merely in affirmation of the ancient claim of the corporation of London, to hold the streets and highways of the city in their own right. The charter of Hen. VI., dated 26 Oct. A. R. 23, granted to the citizens of London and their successors, all soils, commons, purprestures and improvements in all wastes, commons, streets, ways and other places in the city

vaults, and of the pavements within the city and liberties, and all materials and things used, or to be used in or

and suburbs, and in the water of Thames within the limits of the same city. This charter is preserved in the town clerk's office, and copied in *Liber Albus*; and being supposed to be affected by the General Resumption Act of 28 Hen. VI., it is revived by the London charter in parliament of 20 Henry VII., and the *inseximus* of Charles II., confirmed as before mentioned, p. 7; and see *ante*, p. 91, and Norton's Com. pp. 99 and 481, and note to 1 Crompt. Mees. & Roscoe, p. 1. Charles I., by charter, dated 18th Oct. A. R. 14, granted and confirmed to the corporation all messuages, houses, edifices, cottages, buildings, courts, yards, gardens, conduits and cisterns, shops, sheds, porches, benches, cellars, doors of cellars, stables, stalls, stays, pales, posts, jetties and pent-houses, sign-posts, props of signs, and the ground and foundation thereof, shores, watercourses, gutters and easements, with their appurtenances, erected, built, taken, enclosed, obtained, increased, possessed or enjoyed by the corporation, or any other persons whatsoever, of, in, upon or under all or any void grounds, wastes, commons, streets, ways and other common places within the city and liberties, and in the river or water of Thames, or ports, banks, creeks or shores of the same within the liberties. The first charter of Hen. IV. previously granted to the corporation the custody of the gates of Newgate and Ludgate, as all the other gates and posterns of the city, and also the office of gathering the tolls and customs in

Cheap, Billingsgate and Smithfield, alluded to before, p. 93.

Besides these rights, the civic authorities have, from time immemorial, claimed the exclusive custody of the passage over the Thames by the bridge, which was anciently a matter of great moment to the municipality. One of the articles confirmed by the first charter of Edw. II. expressly provided that the keeping the bridge of the city, and the rent^s and profits belonging thereto, should be committed to the custody of two honest and sufficient men of the city, to be chosen by the commonalty; and their officers, we have before seen, are, to this day, elected in common hall, *ante*, p. 83. London Bridge is now placed under the control of three distinct committees of the court of common council, *viz.*—the Bridge House Committee, the London Bridge Approaches Committee, and that of the City and Bridge House Accounts; the former committee superintends the property vested in the corporation for the maintenance and support of London Bridge, and have the superintendence of the repairing, paving, lighting, and watching it. The two other bridges within the limits of the city were built under the provisions of various acts of parliament, *viz.*—Blackfriars, under the 29 Geo. II. c. 86, 7 Geo. III. c. 37, 26 Geo. III. c. 37, 49 Geo. III. c. CLXXI., 52 Geo. III. c. CLXXXIII., and 3 & 4 Will. IV. c. CXVIII.; and Southwark Bridge, under the statutes 51 Geo. III. c. CLXVI., 53 Geo. III. c. LXXXVII., 56 Geo. III. c. CXI., 58 Geo. III.

about the making or repairing thereof, are vested in the corporation of London ; and the commissioners of sewers are authorized and empowered to bring actions in the name of the corporation, or order the preferring of indictments against persons stealing, taking or carrying away any of such materials, &c. ; and any person destroying, damaging, or spoiling the same is subject to a penalty of 20*s.* for the first offence, 40*s.* for the second, and £5 for every other, together with the costs and expenses of repairs, and recovering the penalty (*y*).—s. 38. And no private drain can be made to communicate with the public sewers, without the licence of the commissioners, and when made must be kept in repair by the owners.—ss. 39, 40. Night carts are not allowed to begin emptying bog-houses, or take away night-soil from any house within any of the said streets, &c., before eleven o'clock at night, and must leave off at five o'clock in the morning ; and persons putting or carting away such soil, or wilfully or negligently permitting the same to run out of any cart, tub or pail, or otherwise into any of the said streets, &c., may be apprehended by a constable, and carried to one of the City Compters (*z*), where the keepers are required to receive them, and, as soon as conveniently, carry them before an alderman in order to be committed to hard labour at the city Bridewell, for any time not exceeding one month, or less than ten days ; and a re-

c. LXVIII., 1 Geo. IV. c. XLIX., 4 Geo. IV. c. CXVI., and 5 Geo. IV. c. CLV. The former has been always managed by a committee of the court of common council ; but Southwark Bridge was projected by, and still remains the property of, a private company, much to the prejudice of the neighbourhood on each side the water ; and a plan has been lately proposed to purchase their interest therein, and to throw open this, with all the other metropolitan

bridges, at the expense of the bridge house funds, and the rates of the neighbouring counties.

(*y*) The Police Act further preserves the cleanliness of the sewers, by punishing persons throwing or causing dirt, litter, ashes, carrion, fish, offal or rubbish to be thrown therein, or into any pipe, drain, watercourse, pond or reservoir for water, *ante*, p. 154.

(*z*) See *ante*, pp. 154, 155, and 159.

ward out of the sewers rate not exceeding 20*s.* nor less than 5*s.* is directed to be given to the informer.—s. 67.

Sugar-bakers, sugar-refiners, soap-boilers, or soap-makers, or any other persons, causing lime or clay to be deposited in any of the said streets, &c., and suffering the same to remain longer than is necessary in order to be carted away, or causing the same to be placed in any of the channels, are subject to a penalty of 20*s.* for the first offence, 40*s.* for the second, and £5 for every other.—s. 68 (a).

By the 57 Geo. III. c. XXIX., commonly called Michael Angelo Taylor's Act, reciting the inconvenience arising from the variety of local trusts in the paving, repairing, and regulating the streets in the metropolis (b), various alterations are made in the above provisions; and the commissioners, trustees, or other persons having the control of the pavements in every district within the limits of the act (c), are empowered to appoint a sufficient number of housekeepers in each district as surveyors of pavements, removable at the commissioners' pleasure—s. 2; and boards are required to be placed in conspicuous parts of every district inscribed with the names and residence of such surveyors—s. 5. Notice of the dangerous or defective state of the pavement, and requiring its reparation, may be given by any £50 householder, or two householders of £25 each, to the surveyor of the district—s. 6, who must cause the same to be repaired according to the extent of the damage, within the time specified in the act—s. 7; and in default may be summoned before any two justices of the peace, and ordered to repair the same, and pay the expenses of the summons—s. 8.

(a) The Police Act, now, absolutely prohibits the throwing, or laying in any thoroughfare, any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials, or rubbish thereby occasioned, placed or inclosed so as

to prevent mischief to passengers). *Ante*, p. 154.

(b) See *ante*, p. 290, note (d).

(c) i. e. the Cities and Liberties of London and Westminster, Southwark, Bills of Mortality, and St. Pancras and St. Marylebone.—s. 1.

Notice of the appointment of surveyors of pavements is required to be sent to any of the water or gas companies who have given warning of their pipes being placed beneath such pavements—s. 10; and such companies are required on every occasion to give three days' notice to the surveyors before they break up the pavement, &c. except for the purpose of altering the position of, or repairing, any pipes, stopcocks, or plugs, or of substituting iron for wooden mains or pipes, or of repairing, cleansing, or altering any sewer, vault or drain, in which case they must give such notice within twelve hours from commencing the same, under a penalty of 40s. per square foot of pavement taken up—s. 11.

All mains or pipes for conveyance of water, or inflammable air or gas laid down beneath the surface of the streets, &c. are required to be made of iron only, and new service and other pipes to be made of iron, lead, or some durable material; and the pavement must not be taken up for the purpose of laying down any new mains or pipes during the months of December, January, or February, under a penalty for each offence of £5 per square foot of pavement broken or taken up, and the like sum per foot of pipe laid down against the regulations of the act.—s. 12.

The surveyor of pavements is authorized, under the sanction of the commissioners, &c., at any time during business hours, between ten and four, to attend at the office of any of such companies, and examine and inspect the maps or plans, or drafts or surveys, or delineations or descriptions of the mains of pipes, after two days' notice given of such intention, and take extracts therefrom, or copies thereof—s. 14; and whenever it appears to such surveyor that any pipe, stopcock, plug, or other thing belonging to such companies, or any public sewer under the pavement, is broken or damaged, he must give immediate notice thereof to the proper company or commissioners, &c., requiring the same to be examined, and if needful, repaired, altered, or renewed, and the ground replaced within forty-eight hours afterwards, and the fact

reported to the surveyor within twelve hours after it is completed, under a penalty in each case of £5 for the first offence, £8 for the second, and £10 for every other—s. 15; and such companies, in case the works requiring reparation turn out not to belong to them, are bound, under the like penalties, to transmit the original notice to the real company owning the same, within twenty-four hours after receiving it, and may then receive compensation for the trouble caused by the mistake—s. 16.

Repairs and works done by gas and water companies are required to be completed in such reasonable time as the commissioners direct and appoint, and all pipes and materials are required to be removed at the company's cost within forty-eight hours after they are required so to do by the commissioners, under the same penalties as in section 15; and all gravel, dirt, filth, and rubbish are to be removed in like manner within twenty-four hours after notice given as aforesaid, on penalty of £5 for each offence.—ss. 17, 18.

Gas and water companies to provide bars, posts, rails, ropes, watchmen and lanthorns, to protect the public from accident during the time the ground is excavated by them, on penalty of £5 for neglect after three hours' notice from commissioners of pavements.—s. 19.

In case of gas or water companies neglecting to repair their mains, &c., the commissioners may do the work and sue them for it.—s. 22.

Pavements taken up by gas or water companies, or by any other persons, must be properly repaired by the paviour or mason of the commissioners to the satisfaction of their surveyor; and all the charges and expenses, being duly certified by the proper officers, must be paid by such company or persons within two months after demand, and on neglect thereof commissioners may recover double the amount of such charges and expenses by a warrant of distress, or before the Court of Requests, or by action at law.—s. 23.

The pavement not to be taken up without the consent of the commissioners (except by water or gas companies

in manner aforesaid), on penalty of £5 or not exceeding £10 per square foot taken up.—s. 53.

Commissioners may erect posts of wood, stone, or iron, in the streets, for preventing accidents, and any person wilfully or carelessly damaging the same, is subject to a penalty varying from 40s. to £10, in addition to repairs and costs.—s. 58.

Commissioners may appoint scavengers, who are required to remove dust and ashes, &c. from inhabitants' houses, on penalty of 40s., and have a right to the dust and ashes from the houses, provided they come into the street for the purpose within seven days from their last appearance there, or twenty-four hours after notice; in default whereof, such dust, &c. may be given or sold to any one else.—ss. 59, 60, 61 (*d*).

No scavenger or any other person must sweep any slop, mud, dirt, dust, rubbish, ashes, filth, or soil found in the streets, or any slop, mud, &c. over any sewer, grating, or into any common drain, or sewer, under a penalty of £5.—s. 62.

Every occupier of a house, stable, &c. to sweep the footway pavement clear during frost and snow, in front of such premises, before 10 o'clock, A. M., under a penalty of 10s.—s. 63.

Any person beating carpets (*e*), driving or riding horses for the purpose of breaking them in, or exposing them for sale, or throwing, carting, or laying, or permitting to be thrown, &c. any ashes, dust, dirt, rubbish, offal, dung, soil, blood, or other filth, or annoyance, or any matter or thing, in or upon any carriage or footway pavement, in any street or public place, or killing, slaughtering, scalding, dressing, or cutting up any beast, swine, calf, sheep, lamb, or other cattle, in or near any street, so that blood or filth shall run over or on the

(*d*) See *ante*, p. 305, note (*r*). The act only applies to what, in the contemplation of the owner, is treated as rubbish. If there be any purpose for which the owners can use it,

either on the same premises or elsewhere, he may do so. *Per Parke, Baron, in Filbey v. Combe*, 1 Murphy and Hurlstone, 215.

(*e*) See *ante*, p. 154.

same; or rolling down or placing in any footway paving, any waggon or other carriage, or any wheel, wheelbarrow, or hogshead, &c., or wilfully driving any horse, ass, or other animal on the footway pavement, is liable to forfeit 40s. or not more than £5 for each offence, half to go to the informer, and one witness is sufficient. Offenders may be taken into custody and carried before a justice, by any one witnessing the offence (*f*).—s. 64.

Any person placing any chopping-block, stall-board, show-board on hinges, or otherwise, basket, casks, or any kind of goods whatsoever, or hooping, cleansing, &c. any pipe or barrel, on any part of the carriage or footway in any street or public place, or setting or placing any coach, cart, wain, waggon, dray, or other carriage, (excepting hackney-carriages duly licensed,) on any carriage-way, excepting for the necessary time of loading or unloading the same, or placing any materials or things for building, or any other things whatsoever; or hanging out any meat or offal, or other matter or thing from the house over the pavement, or over any area of such house, or placing out any garden or other pots, (except the same be to the satisfaction of the commissioners' surveyor perfectly secured from falling,) or other thing, over or next to the street or public place, and not removing all such things when required by the surveyor or the commissioners to do so, or having so removed, again replacing the same, is subject, for the first offence, to a penalty of 40s., and £5 for every other, one witness being sufficient; and any officer of the commissioners may seize such things or goods so placed, and if the same be perishable articles of food they become forfeited, and must be at once delivered to the churchwardens or overseers of the poor, or to the master of the workhouse in the parish or district where seized, and if not perishable must be taken to the green-yard, and if not claimed and the expenses paid within five days, they may be sold as other distresses.—s. 65.

(*f*) See *ante*, p. 156.

One notice is sufficient to any person offending in such manner, and need not be repeated prior to seizure or removal.—s. 66.

Commissioners, &c. may, upon complaint to them that the same is a nuisance, order any hogsty, slaughter-house, horse-boiling establishment, or necessary house to be forthwith removed, and if not so removed in seven days after notice, the parties to be liable to a fine of £10, and to be indicted at the next sessions for a common nuisance.—s. 67.

Swine found wandering in the streets, or kept in any place within forty yards of any street or public place, may be seized and forfeited, and their owners, &c. liable to a fine of 40s. as well.—s. 68 (g).

Lime must not be slacked in any street (h) or public place except within a hoard duly licensed by the commissioners, on penalty of from 40s. to £5.—s. 69.

Cellar entrances, area windows, coal plates, &c. to be properly secured, to the satisfaction of commissioners, and not kept open (except for reasonable time while in use), on penalty of from 40s. to £5 and expenses of repairs which commissioners may order.—s. 70.

Same regulations extended to openings in the ground for building vaults, foundation walls of houses, &c. under like penalties.—s. 71 (i).

Commissioners may regulate all projections on the pavements, or signs, fronts, bulks, &c., and may remove such as they deem inconvenient to the public, and obstructing light and air, under a penalty of from 40s. to £5 for refusal, after notice, to alter such things to the commissioners' satisfaction.—s. 72 (k).

The two next sections regulate slop and night carts, in nearly similar terms to those in the 67th section of the City Sewers Act (l).

(g) See *ante*, p. 155.

(h) *Id. ib.* pp. 154, 279.

(i) *Id. ib.* p. 156.

(k) See *ante*, p. 294.

(l) *Ante*, p. 309; and see also p. 155.

The written consent of the surveyor is required for the erection of hoards, or the same may be removed, and the offender subject to a penalty of 10*s.* per diem.—s. 75.

The commissioners are empowered to order the streets to be watered, and to levy a rate for that purpose, but not without the consent of three fourths of the inhabitants.—s. 76, 78.

The commissioners are empowered to stop up courts, alleys, or places which have become dangerous or offensive, after being viewed by any two or more justices, and with the written consent of the owners of the property adjoining to four parts in the five in length of such court or alley, subject to appeal if required; and no court or place can be stopped, if in so doing any owner of any house or tenement, or land therein, is prevented from passing freely to and fro. s. 79.

For the improvement(*m*) of the streets and public places

(*m*) By the various improvement acts for the metropolis, the corporation of London, and the Commissioners of Woods and Forests, and other public bodies, are invested with very extensive powers, for the purchase and taking possession of property, which can be only very cursorily noticed here.

By one of the London Bridge Approaches Acts, the 4 Geo. IV. c. 50, s. 55, it was declared, that as often as any house or building situate between Lombard Street, and St. Margaret's Hill in Southwark, on the western side of Gracechurch Street, Fish Street Hill, or High Street, Southwark, or any street or place leading into or adjoining the same, within fifty feet of the then present front, should be burnt down, or the same or more than one third part thereof should be taken or pulled down for any purpose, or the owner

or owners should be willing or agree to pull down the same or a sufficient part thereof, the London Bridge Committee of the court of common council might take and lay open the site thereof, and convert the same into the street or way for the purpose of widening the same, making satisfaction to the owner or owners of such houses or buildings, in the manner directed by the act; further powers were also given to the London Bridge Committee, by the statutes 7 Geo. IV. c. 40, 7 & 8 Geo. IV. c. XXX., 10 Geo. IV. c. CXXXVI., 11 Geo. IV. c. LXIV., 1 Will. IV. c. III., 2 & 3 Will. IV. c. XXIII., 4 & 5 Will. IV. c. CXIII., 2 & 3 Vict. c. CVII., by the last of which acts the committee are empowered to make a commodious communication from the north end of Princes Street towards West Smithfield, through Cateaton Street, Lad Lane, Maiden

in the parochial or other districts within the jurisdiction of the act, and for the public advantage, the commis-

Lane, Bull and Mouth Street, Little Britain, and Duke Street, by widening Cateaton Street, and for that purpose to take down houses and buildings on the north side thereof, between Basinghall Street and Guildhall Yard and King Street, and also houses and buildings opposite thereto, and also houses and buildings on the south side thereof, between Ironmonger Lane and Milk Street; and by widening and diverting Lad Lane, and for that purpose to take down houses and buildings on both sides thereof, and houses and buildings in *Wood Street*; and by widening *Maiden Lane*, and for that purpose to take down houses and buildings on the south side thereof, between *Wood Street* and *Wax Chandler's Hall*, and on the north side thereof, between *Staining Lane* and *Foster Lane*, and *Noble Street*; and by widening *Bull and Mouth Street*, and for that purpose to take down houses on the north side thereof; and by widening the communication between the same street and *Little Britain*, and for that purpose to take down houses between the west end thereof and the south end of *Little Britain*; and also to widen and improve *Lothbury*, and for that purpose to take down houses and buildings on the north side thereof, between *Tokenhouse Yard* and *Moorgate Street*; and also to widen and improve *Upper Thames Street*, and for that purpose to take down houses and buildings on the south side of *Upper Thames Street*, between *Anchor Alley* and *Broken Wharf*; and also to widen and improve the communication

between *Mansion House Street* and *George Street*, and for that purpose to take down the house at the north-west corner of *George Street*, and the corner of *Mansion House Place*; and also to widen and improve the communications between *Whitechapel* and *Aldgate*, and the *Minories* and *Houndsditch*, and for that purpose to take down houses and buildings at and near the north-east corner of the *Minories*, and the corner of *Aldgate High Street*, and *Whitechapel*, and houses and buildings at or near the north-west corner of the *Minories* and in *Aldgate*, and at the south-east corner of *Houndsditch*.—s. 1. Such improvements to be made according to map or plan deposited in the town clerk's office—s. 2. And powers are given to the corporation, within five years from the passing of the act, the 26th of August, 1839, to take the houses and lands mentioned in the schedule of the act, on giving six months' notice thereof, and any other contiguous property with the consent of the owner—ss. 11—16; with the usual provisos for settlement of disputes, &c. The powers were recently made the subject of litigation, and very liberally construed by the Vice-Chancellor of England. *University of Oxford v. Corporation of London*, V. C., 7 July, 1841. Various powers are also given to the corporation of London over the adjacent property, by the Royal Exchange Rebuilding Act, 1 & 2 Vict. c. C. for improving the site of the building, and altering, diverting, or stopping up such streets as may be necessary,

sioners or trustees of the paving within the district are empowered to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places, within any parochial or other district, into any other street or public place within such

and of purchasing compulsorily various premises in the neighbourhood; and the execution of the act is entrusted to a committee of common council, called the Royal Exchange Rebuilding Committee. The Bank of England is also invested with somewhat similar powers, as to the neighbouring property, by the 39 & 40 Geo. III. c. 89. Some extensive improvements having been projected in the neighbourhood of the Bank under these various statutes, which were not altogether practicable under the powers conferred thereby, the commissioners of sewers very recently endeavoured to put in force the powers given them by the above sections of the 57 Geo. III. c. XXIX., but the Vice-Chancellor decided that, as the line of road was expressly marked out by the above local acts, the more general provisions of the statute in question must be considered to be taken away thereby; and granted an injunction to restrain the commissioners of sewers from proceeding to assess the value of the premises required, the site of the Sun Fire Office. *Harman v. Jones*, Vice Ch., 1 July, 1841. The Lord Chancellor subsequently dissolved the injunction, and left the parties to their remedy at law; and the dispute was, in consequence, compromised, leaving the point, which certainly, as it

regards the construction of the Paving Act, is an extremely important one.

Besides the above statutes, there are also various other local improvement acts for particular portions of the metropolis, the compulsory powers of which, however, are for the most part expired; but if the doctrine of the Vice Ch., in the above case, were to be acted upon, the power of the commissioners would, nevertheless, in every case, seem to be taken away, wherever a specific plan of improvement had been laid down by statute since the passing of the 57 Geo. III. c. XXIX. These local statutes are, the 38 Geo. III. c. LXI., the 39 & 40 Geo. III. c. LXII., 42 Geo. III. c. LXXIII., 44 Geo. III. c. XXVII., 46 Geo. III. c. XCVII., 49 Geo. III. c. LXX. and LXXXII., 51 Geo. III. c. CCIII., and 52 Geo. III. c. LXXV. for Temple Bar; 52 Geo. III. c. CXLIX., 53 Geo. III. c. LXXII., 56 Geo. III. c. XLV., and 47 Geo. III. sess. 2, c. XXXVIII., for Upper East Smithfield; the 55 Geo. III. c. XCI. for Cheapside; the 5 Geo. IV. c. CLI., 11 Geo. IV. & 1 Will. IV. c. LXIV., for Fleet Market; the 1 & 2 Vict. c. LXXXIII., for the Farringdon Extension Street; and the 7 Geo. IV. c. 78, and various other statutes, for Westminster.

or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel or pave such new part or parts of any such streets or public places so altered, widened, extended, opened or lengthened as aforesaid: and that if any houses, walls, buildings, lands, tenements and hereditaments, or any part thereof, be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct or prevent them from so altering, turning, widening, extending, lengthening, continuing or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, &c. will be necessary for that purpose, such commissioners or trustees may treat, contract, and agree by themselves or their agents with the owners and occupiers for that purpose, and pay for the same out of the rates, and make the alteration required—s. 80; and the usual provisions are made for enabling incapacitated persons to convey, for issuing a precept, and impanelling a jury, in case of dispute, &c. as in ordinary improvement acts—ss. 81—96.

CHAPTER XIX.

THE RIVER THAMES AND PORT OF LONDON.

WHAT we have hitherto said of the City of London, relates to its more confined limits, as a part only of the great metropolis; we have now to treat of a subject which concerns not only the whole of this city, but affects, in a great degree, the commerce of the world.

"A port of the sea includes," says Sir M. Hale (*a*), "more than the bare place where the ships unlade, and sometimes extends many miles, as the Port of London anciently extended to Greenwich in the time of Edward I.; and Gravesend is also a *member* of it." The other members of this port, besides London itself as the *caput portus*, he mentions to be *Blackwall* and *Lea* (*b*).

In every sea-port in England there are three kinds of rights: *jus privatum*, or interest of propriety or franchise; *jus publicum*, the common interest that all persons have to resort to or from public ports, as public sea-marts or markets; and the *jus regium*, or the right of superintendency and prerogative of the Crown for the safety of the realm, benefit of commerce, or security of his customs (*c*).

The conservancy of the *Thames*, and the regulation of the harbour, are by various charters and acts of parliament placed under the superintendence of the corporation of London, who are said to have the actual soil and property therein (*d*), subject, however, to the *jus regium* of the Crown above alluded to (*e*).

(*a*) De Port. Maris, part 2, cap. 2; Hargr. Tracts, p. 46.

(*b*) *Id. ib.* p. 48; see *post*, p. 355.

(*c*) *Id. ib.* p. 72.

(*d*) Com. Dig. Navigation, B.; Dav. 56 b, citing the charter of

Hen. VI. mentioned *post*, p. 321.

(*e*) See Lord Fitzwaller's case, 1 Mod. 106; *Bulstrode v. Hall and Stephens*, Sid. 148; Com. Dig. tit. *Chemin* (A 1).

By charters 8 Rich. I., 11 John, 11 Hen. III., and 1 Edw. III., the citizens of London were empowered to remove and take away all *kidels* and wears in the Thames and Medway, and to have the punishment of such as offended therein.

By statute 17 Rich. II. c. 9, it is ordained that the mayor of London for the time being shall have the *conservation* (*f*) of the statutes 13 Edw. I. c. 47, and 13 Rich. II. c. 19, and the execution thereof in the Thames from Staines Bridge to London, and in the river Medway. And a charter dated 26th October, 23 Hen. VI., grants to the citizens, amongst other things, all soils, commons, purprestures and improvements in all wastes, commons, streets, ways, and other places in the city and suburbs aforesaid, *and in the water of Thames*, within the limits of the same city, together with the profits of the same purprestures and improvements; and that they might improve, rent, and enjoy the rents thereof for ever (*g*).

By a subsequent statute, reciting that the mayor of London for the time being had the conservation of the water and river of Thames, from the bridge of Staines to the waters of *Yendall* and Medway, and that, within few years, by tempest of weather and great abundance of water in the said river, divers breaches, issues and creeks had been and grown out of the said river; it is ordained that (*h*)

(*f*) *Conservator est qui sine judiciali examine jus aliquod publicum tuetur.* Thus judges and justices are called *conservators* of the peace, and there were formerly also *conservators* of the truce and safe conducts, 4 Hen. V. c. 7; *conservators* of the privileges of the Knights Templars, (Stat. Westm. 2, c. 43,) &c. The corporation of the great *lehel* of the *fens* consists of a governor, six bailiffs, twenty *conservators*, and commonalty, 15 Car. II. c. 17; and

by the 17 Rich. II. c. 9, all justices of the peace are invested with the same powers as *conservators* in other rivers, as the lord mayor has in the Thames; a commission is issued by the Crown, at the commencement of every reign, to the lord mayor as conservator.

(*g*) This charter still remains in force. See Norton's Com. p. 81; *ante*, p. 320.

(*h*) 4 Hen. VII. c. 15; 4 Inst. 250.

the mayor of London and his successors shall have the like conservation and authority in all the *issues, breaches, and ground overflown as far as the water ebbeth and floweth*, grown out of the river Thames, as touching the punishment for using unlawful nets and engines, as he has within the said river; and the statute 1 Eliz. c. 17, confirms the respective powers of the lord high admiral and *the mayor of London* in the conservancy of the great and navigable rivers. The lord high admiral afterwards contested the city's right to the conservancy of the Thames, and the controversy seems to have lasted during the greater part of Elizabeth's reign (i), and, in 1587, a verdict was given in favour of the city; but in order to decide the question by a more solemn proceeding, a *quo warranto* was issued for the purpose in the beginning of the next reign, which was argued for the Crown by Sir Edward Coke, the then attorney general, who afterwards submitted to a judgment in favour of the claim of the city (k); and by a charter granted shortly after (l), reciting the immemorial right (m) of the corporation to the office of bailiff and conservator of the Thames, the same was confirmed "to be exercised by the mayor for the time being, or his sufficient deputies, from time to time, for ever, in, upon, or about the same water of *Thames*, that is to say, from the bridge of *Staines* to the bridge of London, and from thence to a certain place called *Yenland*, otherwise *Yenleet* (n), towards the sea, and towards the East, and Medway, and in the port of the City of London aforesaid, and upon whatsoever bank, shore and wharf of the same water of Thames within such limits." And in

(i) See a minute of these disputes taken from the city books, in Strype's Stow, lib. 1, p. 38; and App. 2, p. 14.

(k) See Coke's Entries, *Quo Warr.* 4, fol. 536.

(l) 20th August, 3 Jac. I. Rot. Scacc.; 3 Jac. I. Rot. 89.

(m) Liber *Antiq. Regum*, 156;

and 14 Edw. II., cited Strype's Stow, lib. 1, p. 35. See also Schultes on Aquatic Rights, 56—60.

(n) Now called Yantleet, in the county of Kent. The boundary stone, on the opposite shore, is at Leigh, in Essex, and bears the date of 1285.

various modern statutes this right to the conservancy of the Thames has been expressly reserved (o).

The lord mayor is usually called *admiral* of the port of London (p), though it does not appear what authority could be derived therefrom. All ports and havens in England are *infra corpus comitatus* (q), and therefore the admiral has not at common law any authority therein (r), as to the trial of offences, &c.; but by the above statute of Elizabeth, the lord high admiral and lord mayor were directed to have the *conservancy* of the great and navigable rivers for the purposes of navigation, in the same manner as the lord mayor and all ordinary justices previously had the conservancy in respect of fishing (s). Though, however, these powers had been exercised before the above statutes, they evidently form no part of the common law powers of the admiralty (t). These have always been contested in the Thames, as in other rivers, not on account of the lord mayor being *admiral*, but because the river is *infra corpus comitatus*. This objection was allowed in an old case within the very city walls, on a claim of jurisdiction by the admiral over the Thames at Billingsgate (u), and prohibitions have always been issued for the same reason whenever the admiralty has interfered (x); and it may therefore safely be inferred that the lord mayor has no powers, *as admiral*, within the port of London, any more than the high court of admiralty have in other rivers (y).

(o) 54 Geo. III. c. 159, s. 28;
3 & 4 Will. IV. c. 65.

(p) *Ante*, p. 21; 2 Rep. M. C.
p. 78.

(q) Per Cook, Godb. 261.

(r) Com. Dig. Admiralty, E. 14;
4 Inst. 137, *et seq.*

(s) 17 Ric. II. c. 9; *ante*, p. 321.

(t) Sir L. Jenk. vol. 1, 88, 96;
Com. Dig. Admiral, E. 13.

(u) Mich. 16 Hen. VIII. Rot.
140; 4 Inst. 139.

(x) 35 Hen. VIII. 4 Inst. 139;
3 Bul. 28; 1 Rol. 531, l. 35, R.;
Mod. 916. The jurisdiction of the
court of admiralty seems not to ex-
tend higher up the river Thames than
a sand called the *Black Tail Sand*.
See 6 Rob. 39, and the case of *Bas-
ter and others v. Reader*, there cited.
See statute 1 & 2 Geo. IV. c. 75.

(y) If any inference can be drawn
from the custom of the lord mayor's
ancient claim to royal fish caught in

By statute 54 Geo. III. c. 159, the lord high admiral, or three or more of the commissioners for executing the office of lord high admiral, are authorized, in any port or place where there are docks, dockyards, arsenals, wharfs, or king's moorings, to establish rules and regulations as to the mooring, anchoring, placing, &c. of ships, so as to have free and safe ingress, egress, and regress, unto, into, to and from such ports or places, and with that object to appoint a king's harbour master, who shall be empowered to superintend and enforce obedience to such rules, orders and regulations. The rights of the city are, however, preserved—s. 28, and no harbour master has been therefore appointed thereunder for the port of London.

In 1827, His late Majesty, then lord high admiral, in pursuance of this act, directed a set of rules and regulations for the navigation of the river to be prepared, which was accordingly done by the solicitor of the admiralty. These rules, which prescribe the proper places for the mooring and anchoring of ships from London Bridge to the Nore, were printed and publicly posted up in different places on the shore of the river. The powers, however, given by the act, are confined to the mooring, &c. of ships at or near the royal docks, &c., and as to places within the civic jurisdiction, if ever valid, must be considered superseded by the 10 Geo. IV. c. CXXIV. s. 2 (z).

In their character of conservators of the Thames, the City of London have the control and regulation of the fisheries, the seizing unlawful nets, regulating watermen and lightermen (a) employed on the river, and the shipping in the port, and fixing posts in the river for the convenience of such shipping; removing obstructions occasioned by

the Thames, mentioned *ante*, p. 21, and 2 Rep. M. C. p. 74, it certainly is no argument in favour of his admiralty jurisdiction, for *royal fish*, when caught inland or near the coast, do not belong to the admiral, but to the

Crown. Flowd. 315; 1 Bl. Com. 290.

(z) *Post*, p. 331.

(a) 7 & 8 Geo. IV. c. LXXV.

(b) 39 Geo. III. c. 62; 10 Geo. IV. c. 124.

wears and steps; cleansing the river; directing in what places, and the manner in which, ballast should be taken out of the river (*b*); repairing its banks and breaches; licensing and permitting wharfs, piers, stairs, and other innocent projections, and receiving rents therefor (*c*), and removing such as are unlicensed; erecting and maintaining public stairs, and removing illegal ones; giving orders respecting floats upon the river; granting licences to erect mills and water works, and holding courts of conservancy, and punishing offenders (*d*).

These powers have been for the most part confirmed by various modern acts of parliament for the improvement of the navigation of the river, though they are necessarily exercised at this day through different channels from those to whom it was entrusted when the chief object was merely to preserve the fisheries, and the shipping and commerce of the river were not of that paramount importance which they now are to the well-being of the city (*e*).

In compliance with ancient usage, the lord mayor, accompanied by the recorder (*f*) and other civic officers, still holds in person eight courts of conservancy in the year,—two for each of the counties of Middlesex, Surrey, Kent, and Essex; and occasionally a court in London, into each of which places the jurisdiction extends, reach-

(*b*) *Post*, p. 329.

(*c*) See *ante*, p. 321. The stat. 3 & 4 Will. IV. c. 65, which empowers the lord high admiral to execute certain works on the bed and soil of the river Thames about Woolwich, expressly requires the consent, in writing, of the lord mayor as conservator to be obtained, and the other rights of the conservancy are saved and reserved.

(*d*) Brief statement of the title of the City of London as Conservators of the Thames and Medway, delivered to Dock Committee of the

House of Commons, p. 92 of Appendix, Min. of Evidence.

(*e*) Some idea may be formed of the vast increase of the trade and commerce of the port of London, by the fact, that in 1540, it is said, there were not above four merchant vessels in the river of 120 tons burthen; see *And. Hist. of Com.* vol. 1, p. 369; and in the year 1837, the aggregate of *British* ships that entered this port amounted to no less than 3,629,699 register tons. Report of St. Katherine Dock Co. 1838.

(*f*) See *ante*, p. 119.

ing from *Staines* to *Yantlet Creek* in the Thames, and from *Colemouth Creek* to *Cockham Wood*, in the Medway; and there are various officers appointed by the corporation to see the laws and regulations of the river carried into effect. The fisheries, now of inconsiderable importance, are regulated by statute (*f*); and a set of by-laws (*g*) are in existence, fixing the dimensions of the nets, the times of fishing, and the qualification of the fishermen, &c., who are required to serve a regular apprenticeship to the business (*h*).

(*f*) 30 Geo. II. c. 21.

(*g*) 1 November, 1785.

(*h*) The fishermen of the river Thames were incorporated by letters patent in 1687, (Rot. Pat. 3 Jac. II. p. 6, n. 28,) having previously received a charter from Charles I. (copied in Griffith's "*Conservancy of the River Thames*," p. 134, *et seq.*). The statute 9 Ann. c. 26, subsequently empowered them to make by-laws to prevent abuses in the Thames fishery, subject to the control of the lord mayor and aldermen, with a saving of the rights of the city as conservators of the river, and certain by-laws and regulations were made in pursuance thereof; but the company appear to have ceased to act as far back as 1727, (see recital of stat. 30 Geo. II. c. 21,) and they are now as a company entirely extinct, owing principally to the custom adopted by the fishmongers of becoming owners of fishing vessels themselves, having fishermen as masters, and compelling them to bind their apprentices to themselves, the fishmongers, (see Colquhoun on the Commerce and Police of the Thames, ch. XV. s. 2). In consequence of this abuse, the above act of 30

Geo. II. c. 21, was passed, enabling the lord mayor and aldermen to make rules and ordinances to regulate the fishing and dredging in the Thames and Medway, within their jurisdiction as conservators, for declaring what nets and engines should be used, and at what times and seasons, for ascertaining the assize of the several fish to be taken, and for the preservation of the spawn and fry of fish within such jurisdiction; and for obliging every common fisherman or dredgerman to have his Christian and surname, and place of abode, painted in large and legible characters in his boat. This statute was, in fact, but a confirmation of the ordinary powers of the corporation as conservators of the Thames and Medway; and there are various old ordinances in existence on the above subject, and containing nearly all the provisions made by this statute. (See these ordinances in Priv. Lond. 398; Green's Priv. 193, 194; and Lex Lond. 201.) The officers of the city for the execution of the fishery regulations are the *water bailiff* and his assistants, and the *yeomen of the waterside*, who are empowered from time to time to enter any boat, vessel, or craft, of any fisherman or

The preventing obstructions in the river, both from natural and artificial causes, is also a part of the duties of the civic functionaries, in conjunction, however, in some degree, with the corporation of the Trinity House.

By the charter granted to the latter, dated 11th June, 36 Eliz., it appears that the *lastage and ballastage* of all ships and vessels in the river Thames, were surrendered by the then lord high admiral(i) of England to the Queen, to the intent that the same might be granted and confirmed to the above corporation, which was accordingly done; and the gravel, sand and soil used for that purpose were directed to be raised and taken out and from such shelves and places of the river as should be dangerous to the shipping, in order to render the navigation more safe, and this grant has been since confirmed by various charters and acts of parliament (j).

By statute 45 Geo. III. c. XCVIII. s. 2 (k), it is de-

dredgerman, or other person fishing or taking fish, or endeavouring to take fish, upon the Thames or Medway within the civic jurisdiction, and there search for, take, and seize all spawn, fry, brood of fish, spatt of oysters, and unsizeable, unwholesome, or unseasonable fish, and also all unlawful nets, engines, and instruments for taking or destroying fish, being in any such boat, &c. or upon the adjoining shore, and bring them before the proper magistrate, when the same, being in contravention of the fishing laws and regulations, may be destroyed. The by-laws, which are nearly unknown, are directed to take effect from the 1st November, 1785.

..(f) This, it will be observed, was before the claim of the lord high admiral to a jurisdiction over the Thames was settled. See *ante*, p. 323. It has been urged as an ob-

jection against the claim of the city authorities. See Rep. on Port of London, 1836, p. 289. It is inconsistent with the charter of Hen. VI., but was not opposed by the citizens, as it was evidently to their interest, that the powers conferred on the Trinity House should be exercised, the means taken by themselves to secure the cleansing of the river having failed of their object. See *post*, note (k).

(j) Charter, 18th August, 15 Car. II.; and 24th June, 17 Car. II.; 6 Geo. II. c. 29; 18 Geo. II. c. 21; 45 Geo. III. c. XCVIII. s. 2; 49 Geo. III. c. CLV.

(k) Continued by 49 Geo. III. c. CLV. to 1st August, 1820; continued by 1 and 2 Geo. IV. c. CXXIII., and 3 Geo. IV. c. CXI. to 1st August, 1843. In the last of the above charters of Car. II., though not purporting to be sealed

clared that the sole right of supplying all ships and vessels with ballast, that shall pass and repass in the river *Thames*, between *London Bridge* and the main sea, at the rates and prices accustomed, and of digging, raising, and taking up gravel, sand and soil of the said river, and every part and parcel thereof within such limits, for the ballasting such ships and vessels as aforesaid, shall be, and is, thereby vested, and shall belong to the master, wardens and assistants of the Trinity House,

with the seal of the Trinity House, the latter *covenant* and promise, that they and their successors shall and will, by the best *means* and *ways* they can, provide and take care that the *gravel*, *sand*, and *soil*, by them to be taken out of the said river, be raised and taken out and from such shelves and places as are or shall be dangerous to the shipping, and for the bettering and greater safety of the same; and also provide and have, at their own proper costs and charges, such number of *lighters*, great and small, as shall be from time to time sufficient upon all occasions, for the *exporting* and *importing* of the said ballast to and from the wharfs, and the ships, barks, or vessels using the same, such lighters to be justly *gauged* and *marked*, that their burden and size might be known; and to avoid abuses and deceits, and for the better advancement of the said work of *cleansing* the said river, and the more speedy and effectual performance thereof, the king grants to the Trinity House the profits of all fines imposed for removal of shelves, &c. in the river; but a different appropriation of those fines, &c. having been since authorized by various acts of parliament, without regard to

the above grant, the Trinity House now consider themselves released from the obligation. See Rep. on the Port of London, 1836, Min. of Evid. p. 23; and Appendix, No. 30, p. 279. By an Act of Common Council, dated 28th September, 30 Hen. VIII., it was declared that it should be lawful for every person or persons to dig, carry away, and take away sand, gravel, or any rubbish, earth, or anything lying or being in any shelf or shelves within the said river, without let or interruption of any person or persons, and without anything paying for the same, and after that to sell the same away, or otherwise occupy or dispose thereof, at their free liberty and pleasure, and that all paviours, bricklayers, tilers, masons, and others using sand or gravel, should endeavour themselves, with all their diligence, to use the said sand or gravel, and none other, paying reasonably for the same. This by-law was held bad by the Court of Common Pleas in the 28 Eliz., Anderson, Chief Justice, and the other judges very vehemently censuring the ordinance as unreasonable, and improper in substance and form. See *Anon.*, Godb. 106, pl. 126, *S. C.*, and *ante*, p. 49.

for the uses and purposes aforesaid, and for the ballasting of ships and vessels in the said river; and any persons infringing such exclusive right is subject to a penalty of £10 per ton of ballast raised or supplied; and the like penalty is inflicted on the owner, master, mate, or other officer of the ship or vessel, or any other person receiving the same—s. 3; with an exception, however, of ships or vessels in the service of the Crown—s. 4.

No ballast to be taken from the bed of the river above or westward of London Bridge, without the licence in writing of the lord mayor, as conservator of the Thames, or the court of common council, or the Thames Navigation Committee.—s. 17. And a penalty of not exceeding £20, nor less than 40s., for every offence is inflicted for unloading, putting or throwing into the said river any rubbish, earth, ashes, dirt, or soil from any wharf, quay or bank, adjoining or near to the said river, or from or out of any barge or lighter—s. 18; and a penalty of £20 for every offence is also inflicted on any captain, mate, or other officer or person belonging to or being on board any ship or vessel in the *Thames*, throwing, or unloading, or putting, or causing, or procuring, or permitting, or suffering to be thrown, &c. any ballast of any kind or denomination out of any ship or vessel into the said river, or unloading, laying, or putting, or causing, or procuring, or permitting to be unloaded, laid or put any such ballast on any shore, ground or place below the high-water mark in the said river (*l*)—s. 19.

The jurisdiction of the city in preventing encroachments, came in question in the case of *Rex v. Montague and others*, tried in the year 1824, which was an action against certain officers of the City of London for opening a communication between the Thames and

(*l*) These offences are also punishable by various other acts of parliament, (see 39 Geo. III. c. LXIX. s. 99; 54 Geo. III. c. CXLIX.; 2 & 3 Vict. c. XCIV.; *ante*, p. 156,) and form a part also of the articles

of inquiry of the conservancy jury. See Priv. Lond. 412; Articles of Conservancy Jury, No. 27; Act of Common Council, 28th September, 30 Hen. VIII. Calth. p. 174.

Medway, in the island of Grain in Kent, through Yantlet Creek, the boundary line of the civic jurisdiction, which there was ample evidence to prove was formerly a navigable communication between the two rivers. The learned judge who presided, however, left it to the jury to say whether the communication had not been choked up by natural causes, as in that case the civic jurisdiction was gone. A verdict was accordingly returned against the City, which was afterwards confirmed by the Court of King's Bench (*m*).

The greater part of the functions attached to the conservancy of the Thames are at this day entrusted to a committee of the common council, called the "*Thames Navigation and Port of London Committee*," in whom, under the provisions of various modern acts of parliament, very extensive powers are vested for the regulation and improvement of the navigation of the river.

The statutes by which these powers are conferred westward of London Bridge are the 14 Geo. III. c. XCI., 17 Geo. III. c. XVIII., 50 Geo. III. c. CCIV., 52 Geo. III. c. XLVI., and 54 Geo. III. c. CCXXIII., enabling the corporation to erect locks, keep the banks in repair, and levy tolls to pay the expenses.

To see to the due observance of these statutes and the other local regulations of the river, there are appointed, under the above committee, by the corporation, the water bailiff (*n*) and his assistants, the clerk of the works of the river (*o*), collectors of tolls, lock-keepers (*p*), &c., with whom, in a great degree, the actual responsibility remains (*q*).

The water bailiff is the most ancient of these officers.

(*m*) *Rex v. Montagu*, 6 D. & R. 616; 4 B & C. 589. As to the ancient state of this passage, see Lamb. Peramb. p. 275; Leland's Itin. vol. 7, p. 128; Text. Roff. p. 236; Hasted's Hist. of Kent, folio ed. vol. 2, p. 90.

(*n*) See 2 Rep. M. C. pp. 114, 117.

(*o*) *Id. ib.* p. 110.

(*p*) *Id. ib.* p. 111. The locks erected on the river are at Teddington, Moulsey, Sunbury, Shepperton, Chertsey, and Penton Hook; and the keepers are regulated by orders of the committee, dated 2nd March, 1815.

(*q*) See *Bulbroke v. Goodeve*, 1 W. Bl. 569.

Though in former times principally occupied in looking after the preservation of the fisheries, he has still various useful duties to perform. Besides the duties attached to the holding courts of conservancy, he has to survey the whole of the civic jurisdiction in the river, to observe all encroachments or nuisances, take cognizance of drifts or estrays, and lay regular statements before the committee (r).

In pursuance of the charter of Henry VI. (s), the civic authorities are in the habit of levying fines and taking rents for works and erections upon and near to the banks of the river (t). They can, however, clearly confer no right to erect works which would, by impeding the navigation (u), or otherwise, tend to create a nuisance.

The powers of the civic authorities below the bridge are also regulated by various statutes (x), enabling the corporation to construct the city canal, &c., and giving other permanent powers over the harbour, which have been for the most part incorporated in the 10 Geo. IV. c. CXXIV., the act by which the port of London is at present regulated, subject, however, to the provisions of the different local acts relating to the docks, the Trinity House, &c., which will be noticed in their proper places.

The port of London, like other ports, includes more than the bare space where the ships unlade, and extends, as we shall see, many miles (y). The jurisdiction of the civic authorities over the Thames extends, as we have seen (z), to Yantlet Creek, about 50 miles from Lon-

(r) 2 Rep. M. C. p. 114.

(s) *Ante*, p. 321.

(t) Rep. of Committee of House of Commons on Port of London, 1836, Min. of Evid. p. 23.

(u) *Res v. Grosvenor and others*, 2 Stark. 511; *ante*, p. 320.

(x) 39 Geo. III. c. LXIX.; 39 & 40 Geo. III. c. XLVII.; 42 Geo. III. c. XLIX. CXIII.; 43 Geo. III. c. CXXIV. CXXVI.; 44 Geo. III. c.

VII.; 45 Geo. III. c. LVIII. LXIII.; 46 Geo. III. c. CXXXII.; 47 Geo. III. sess. 2, c. XXXI.; 10 Geo. IV. c. CXXIV.; 10 Geo. IV. c. CXXX.; 1 & 2 Will. IV. c. 76, Coal Act; 4 & 5 Will. IV. c. 32.

(y) *Post*, p. 355; Hale de Port. Maris, ch. 2, p. 46, in Hargr. Tracts.

(z) *Ante*, p. 321.

don Bridge, but their control over the shipping in the port extends only from the latter to *Bugsby's Hole* (about the middle of the reach between Blackwall and Woolwich) (a). The lord mayor, as principal conservator of the river, is empowered to appoint four harbour masters for the regulation and superintendence of the shipping, &c., from whom the court of common council, with the consent of three or more of the elder brethren of the Trinity House, are directed to select one to be the principal harbour master. 10 Geo. IV. c. CXXIV. s. 2.

Each harbour master is invested with full power to direct the entering, mooring, unmooring, moving and removing all ships and other vessels, steam-boats, lighters, and craft, except those belonging to the Trinity House, coming into, lying or being in the port of London, as to the time and manner of entrance into, lying in, or going out of the same, and their respective berths, stations, positions, loading and discharging—s. 4; and to direct and regulate the number of ships, vessels, or steam boats, to lie at the same time at any wharf or quay in the port, and their respective stations and positions; the owner or occupier of the wharf being subject to a penalty of not exceeding £10 for disobedience—s. 5.

Vessels which have discharged their cargoes must not be removed for the purpose of taking berth in any tier, or removing from one tier to another without a harbour master's order, under a penalty not exceeding £10—s. 6; and vessels for sale, or not receiving or discharging cargo, may be removed, by a harbour master's order, to any of the tiers in the river, or into dock, and the master or owner of the vessel is subject to a penalty not exceeding £10 for disobedience to such order, and to a penalty not exceeding £5 per hour for refusing or neglecting to moor, unmoor, move or remove, according to the directions of the harbour master, who is in such case empowered to remove the same, and recover the ex-

(a) 2 Rep. M. C. p. 74.

penses in the same manner as the penalty—ss. 7 and 9.

The right to the mooring chains below bridge, within the civic jurisdiction, was formerly claimed by the Crown, and was granted to Lord *Gwydir*, but the grant was disputed by the corporation; and by the 39 Geo. III. c. LXIX. s. 35, the right was authorized to be purchased for the use, benefit, and convenience of the public in navigating, mooring, and removing ships and other vessels on the river, free from all rents, dues and other payments on account thereof—s. 36. And the common council were empowered to remove and alter such mooring chains and place others, under the inspection of the Trinity House.—s. 37 (b).

The superintendence of the repairs or alterations of all the mooring chains, mooring anchors, mooring stones and buoys within the above limits, is entrusted to an officer appointed by the court of common council, under the name of the *superintendent of mooring chains*. The surveyor of the port of London, appointed by the same body, has to prepare particulars and specifications for contracts, and to certify quantity and amounts; to advise with the superintendent of mooring chains when required, in respect of alterations to be made in any of the moorings of the river, or of additional ones to be laid down, and to prepare the estimates, particulars and specifications for contracts for mooring chains, anchors, &c. (c).

By the 10 Geo. IV. c. CLXIV. s. 13, the court of common council are empowered, from time to time, to make by-laws, rules, orders and regulations for the observance and good government of the harbour masters, and the times and places of their respective attendance,

(b) The 10th section of the 10 Geo. IV. c. CXXIV., inflicts a penalty of £5 on chain lightermen, or other persons employed in mooring or unmooring ships, raising up or

suspending any mooring chain between half flood tide and half ebb tide.

(c) 2 Rep. M. C. p. 99.

and the division and regulation of their several duties, and for the more safe and convenient navigating, placing, mooring, unmooring, and removing ships and other vessels on the river, in and near the port (except the docks and places at the entrance thereof, under the control of the dock masters, or other persons by act of parliament), and for the better regulating all masters of vessels, pilots, lightermen and others, within the said port (except as aforesaid), and for other purposes mentioned in the act, and to fix penalties for the non-observance thereof.

Certain by-laws were made in pursuance of these powers on the 14th July, 1829, which were repealed on the 1st December, 1836, and the following substituted therefor:—

The principal or superintending harbour master is invested with the sole and entire control of the executive part of the harbour and mooring chain service, to enforce the due observance of the by-laws and established regulations of the port of London; and to have the control and direction of the three other harbour masters, &c.—s. 1; he is directed to preside as chairman at the meeting of the harbour masters—s. 2; and to be furnished with a boat and a competent number of watermen—s. 3. Two other boats and watermen to be provided for the other harbour masters, and the service generally; and a third if necessary.—s. 4. The watermen to reside where directed; and may be suspended by the harbour master.—s. 5. The harbour masters to attend the Port of London Committee when summoned.—s. 6. The principal harbour master to attend daily at the office of the harbour service at St. Katherine's—s. 7; and one of the other three at the office at Greenwich—s. 8. One of the junior harbour masters to be on duty during the whole of the flood tide, and the first two hours after high water at the upper station; that is to say, between London Bridge and Duke's Shore. Another of the harbour masters to be on duty at the same time at the lower station; that

is to say, between Duke's Shore and Bugsby's Hole. And at night one of the harbour masters to be on duty for the last two hours of the flood, and first hour of the ebb tides, and during that time go to the lower station, and stop ships, vessels, and steam-boats, if necessary, or direct them where to go; and when no more ships, vessels, or steam-boats are likely to pass Blackwall, to go up with the last of the tide, and see how the ships, vessels, and steam-boats have taken their berths, and give directions thereon. The mode of dividing the labours of the service is laid down in the regulations, and a list of the harbour masters on duty, describing their respective stations, is required to be ready for inspection at both offices, during business hours—s. 9; and provisions are made for the case of illness or necessary absence of any of the harbour masters—ss. 10, 11, 12 and 13. And the harbour masters are directed to hold monthly meetings to deliberate upon all subjects tending to the improvement of the port of London, the removal of all obstructions and impediments to the navigation, whether arising from the formation of shoals or otherwise; the result of such meetings to be reported to the committee, who are thereupon to issue orders for providing therefor—s. 16; and the harbour masters, from time to time, to report to the principal harbour master any observations which the exigency of the service may require, for the purpose of being transmitted to the committee—s. 17; and to take soundings—s. 20, from time to time, according to the Trinity standard, for the same purpose.

A clear passage for navigation of not less than 250 feet is directed to be always preserved between Irongate stairs and Bugsby's Hole—s. 24, and a certain number of tiers to be exclusively used by vessels laden with coal—s. 26; and when there is no accommodation for any more such vessels in the pools, any that arrive may be detained at Deptford—s. 27; and a penalty of £10 is inflicted for laying at or mooring in any of the in-shore passages or ferries between London Bridge and Limehouse—s. 29, so

as to obstruct the passage; and no raft of timber exceeding sixty feet in length and twenty feet in breadth to pass along between Limehouse Hole and London Bridge; and no such raft exceeding forty feet in width to pass along any other part of the stream between Limehouse Hole and the lower part of Bugsby's Hole; nor two or more rafts to go abreast, nor more than three lengthways, or for any following raft to come within three hundred yards of another, under a penalty of £5—s. 30; and barges, boats, and other single craft, to pass singly—s. 31, each having one able and skilful man at least always on board, under a penalty of 40s.—s. 32; anchor dropped to have sufficient buoy and buoy-rope bent thereto—s. 33, and anchors not to lie or remain in the stream to endanger ships, &c., under a penalty of £5, and harbour masters to remove them at owners' expense—s. 34. No ship or vessel to be navigated or lie with anchor *a-cock-bill*, or hanging perpendicular by the stopper from the *cat-head*, except whilst in the act of *fishing* the same, or getting under weigh, or coming to an anchor (*d*), under a penalty of £5, and 40s. for every anchor—s. 35; or with anchor hanging by the cable, except whilst as aforesaid, or whilst *catting* the same—s. 36, under a penalty of £5. Vessels to slack off when required by the harbour master, under the same penalty—s. 37; ships not to be *boomed* off, unless to admit lighters; and when in tier to be laden over the bows, unless necessary from weight or bulk, to

(*d*) In a late collision case, it was attempted to put in evidence a practice in the river, in contravention of one of the above by-laws, but the learned judge who presided would not admit it. The rule of the river was admitted to be (as at sea, 2 Dods. Adm. Rep. 86), that if a light vessel is going free, and a loaded vessel is coming close hauled to the wind, the latter ought to keep her course, and the light vessel to bear

away. The plaintiff's vessel had broken through this rule from apprehension of danger from the defendant's vessel carrying her anchor *a-cock-bill*, in contravention of the above by-law, and the learned judge left it to the jury to say which of the parties was the real cause of the accident, and a verdict was returned for the plaintiff. *Sills v. Brown, cor. Coleridge, J., London Sitings, 9 Car. & P. 604.*

load alongside; and masters of ships to obey orders of harbour masters under a penalty of 40*s.*—*s.* 38.

Ships moored across the river with hawser or rope, to slack the same when other vessels are going with the tide—*s.* 39; and persons obstructing the harbour masters in the execution of their duty are subject to a penalty of £10—*s.* 40.

Harbour masters to order topmasts to be struck when necessary for general safety, and persons refusing to obey, are subject to a penalty of 40*s.*—*s.* 41.

Masters of steam vessels to check their velocity when coming near deep-laden barges, passage-boats, &c., under a penalty of £10, in addition to any other for damage done.—*s.* 43.

Strokes of the engine to be reduced to half speed westward of Limehouse entrance of the West India Docks; and no steam vessel to be propelled from thence up the river at a greater rate than five miles or knots per hour (*e*), except under unavoidable circumstances, as the prevention of accidents, &c., under a penalty of £10; and steam vessels navigating after dark between such place and London Bridge, to have lanthorns with strong lights at the mast-head and under the bowsprit, under a penalty not exceeding £10.

By the late Coal Act (*f*), reciting that great inconvenience had been caused to the navigation of the port of London in consequence of the collection of large numbers of vessels laden with coals in different parts of the said port (*g*), the court of common council were empowered, within three months from the passing of the act, subject to the approbation of the Board of Trade, to make by-laws to regulate or remove vessels laden with coals in the port of London, and otherwise remedy such inconveniences, and from time to time to vary such by-laws, fixing up a

(*e*) And see By-laws of the Court of Aldermen under the Watermen's Act (7 & 8 Geo. IV. c. LXXV.),

Regulation 42.

(*f*) 1 & 2 Vict. c. CI. s. 13.

(*g*) 10 Geo. IV. c. 124.

copy thereof in the coal market, and giving notice in the London Gazette. In pursuance of which power the following regulations were made and published on the 21st of August, 1838.

The harbour masters are empowered to assign places for colliers on their arriving in the port of London, and, if necessary, the harbour master may prevent coal vessels from coming higher up than Gravesend, and a penalty not exceeding £10 is inflicted on disobedience to the harbour masters' orders. No colliers to remain on the collier tiers more than fifteen days, or after the next flood-tide from the time of discharging the cargo, under a penalty not exceeding £10; but any coal vessel may go up the river to discharge at any dock or wharf, subject to the same penalty for stopping on the road.

Rates of Tonnage.—By the 4 & 5 Will. IV. c. 32, the rates of tonnage imposed on ships frequenting the port of London, by various former acts, are repealed, and the following reduced scale of charges enacted:—

For every ship or other vessel trading coastwise between the port of London and any port or place in Great Britain, Ireland, the Orkneys, Shetland, or the Western Islands of Scotland, for every voyage both in and out of the said port, one halfpenny per ton; for every vessel entering inwards, or clearing outwards in the said port, or to any of the following countries or places, the tonnage under mentioned, *viz.*

| | <i>s.</i> | <i>d.</i> |
|----------------------------------------------------|-----------|-----------|
| Africa | 0 | 0½ |
| America (any part of) | 0 | 0½ |
| Antwerp | 0 | 0½ |
| Azores (any of) | 0 | 0½ |
| Baltic Sea (any country or place within) | 0 | 0½ |
| Brabant | 0 | 0½ |
| Bremen | 0 | 0½ |
| Canary Islands (any of) | 0 | 0½ |
| China | 0 | 0½ |
| Courland | 0 | 0½ |
| Denmark | 0 | 0½ |
| East Indies | 0 | 0½ |

| | s. | d. |
|----------------------------------------------------------------------------------------------------------------|----|----|
| Finland | 0 | 0½ |
| Flanders, or any other part of the Netherlands | 0 | 0½ |
| Florida | 0 | 0½ |
| France, within Ushant | 0 | 0½ |
| —— any other part of | 0 | 0½ |
| Germany (any part of, bordering on or near the German Ocean) | 0 | 0½ |
| Gibraltar | 0 | 0½ |
| Greenland | 0 | 0½ |
| Guernsey, Jersey, Alderney, Sark, or Man | 0 | 0½ |
| Hamburgh | 0 | 0½ |
| Holland, or any other of the United Provinces | 0 | 0½ |
| Holstein | 0 | 0½ |
| Lapland (any part of) | 0 | 0½ |
| Livonia | 0 | 0½ |
| Louisiana | 0 | 0½ |
| Madeira Islands (any of) | 0 | 0½ |
| Mediterranean, or Adriatic Sea (any country, island, port, or place within, or bordering on or near) | 0 | 0½ |
| Mexico | 0 | 0½ |
| Norway | 0 | 0½ |
| Pacific Ocean (any country, island, port, or place within, or bordering on or near) | 0 | 0½ |
| Poland | 0 | 0½ |
| Portugal | 0 | 0½ |
| Prussia | 0 | 0½ |
| Russia (any part of) | 0 | 0½ |
| Spain (any part of) | 0 | 0½ |
| Sweden | 0 | 0½ |
| West Indies | 0 | 0½ |
| And any other country, island, port or place, to the southward of 25° of North Lat. | 0 | 0½ |

which duties are placed under the management of the commissioners of customs, and recoverable in the same manner as the ordinary customs duties ; but the amount when received is to be applicable only to the maintenance of the port of London ; and the commissioners are directed, from time to time, to pay into the chamber of London a sufficient sum to defray the *necessary expenses of the port* (h), and the salaries, wages and superannuation allowance of the harbour service, with power to the com-

(h) See notes, Journal of Trade, 223.

missioners to reduce the amount of the duties, if found to be more than sufficient to defray such expenses (i).—s. 4.

Exemptions.—This act does not extend to charge with any of the said rates any of Her Majesty's ships of war, or any vessel whatsoever being the property of Her Majesty, or of any of the royal family, nor to charge therewith any vessel coming to or going coastwise from the port of London to any port of Great Britain, unless such vessel exceed 45 tons register tonnage, nor any vessel bringing corn coastwise, the principal part of whose cargo consists of corn, nor any fishing smacks, lobster and oyster boats, or vessels for passengers, nor any vessel or craft navigating the river Thames, above and below London Bridge as far as *Gravesend* only, nor any vessel entering the port of London inwards, or going therefrom outwards, when in *ballast*.—s. 5.

Besides the above rates, vessels entering the port of London are subject to the payment to the Trinity House, for *buoyage* and *beaconage*, 1*d.* per ton, if British or foreign privileged, and 2*d.* per ton if foreign unprivileged.

(i) The receipts from port dues during 17 months from the passing of the act, were £14,725 19*s.* 5*d.*; and for one year from the 25th July, 1834, to the like period in 1835, £10,985 16*s.* 9*d.*; and the average expenses of the harbour service are estimated at £6,365. Evid. of Sir John Hall, Rep. of House of Commons on Port of London, 1836. It would be surely a most valuable service to the port, and, indeed,

fairly come under the head of *necessary expenses of the port*, if the surplus of this fund were applicable to the payment of the expenses of removing shelves and mud-banks, and other obstructions in the river, which are every year becoming so glaring as to seriously incommode the commerce and navigation of the port. *Id. ib.* Ev. of Captains Beaufort and Bullock, and others.

CHAPTER XX.

PILOTS, WATERMEN, AND LIGHTERMEN.

Pilots.—THE Trinity House were, by ancient usage and grants from the Crown, empowered to appoint pilots, loadsmen or guides to conduct ships and vessels into and out of, and upon the Thames and Medway, and their several creeks or channels, and to make orders and constitutions for the government of seafaring men on the Thames (a); and their powers have been since regulated by various acts of parliament (b).

By the statute 6 Geo. IV. c. CXXV. s. 2, the Trinity House are now empowered, after due examination, to appoint and annually license, under their common seal, fit and competent persons, duly skilled to act as pilots, for the purpose of conducting all ships and vessels sailing, navigating and passing as well up and down or upon the Thames and Medway, and the channels, creeks and docks thereof or therein, between *Orfordness* and *London Bridge*, as also from *London Bridge* to the *Downs*, and from the *Downs* westward as far as the *Isle of Wight*; and in the English Channel from the *Isle of Wight* to *London Bridge*; such pilots to have the exclusive pilotage of all ships and vessels within those limits.

No persons can be so licensed except such as have served as mate for three years, or have been in actual command for one year, of a square rigged vessel of not less than 80 tons register, as to licences for the North Channel upwards, and not less than 150 tons register,

(a) See Charter of Confirmation c. 152; 47 Geo. III. st. 2, c. LXXI.; to the Trinity House, by James II. 48 Geo. III. c. CIV.; 55 Geo. III.

(b) 3 Geo. I. c. 13; 5 Geo. II. c. LXXXVII.; and 6 Geo. IV. c. c. 20; 7 Geo. I. c. 21; 43 Geo. III. CXXV.

as to licences for the North Channel, Queen's Channel, South Channel, or other channels downwards; or have been employed in the pilotage or buoyage service of the Trinity House for seven years, or served a five years' apprenticeship to some licensed pilot vessel; nor take charge of a ship drawing more than fourteen feet water until after having acted as a licensed pilot for three years, and being approved on re-examination by the Trinity House, under a penalty of £10.—s. 3. The pilots to pay to the Trinity House the annual sum of three guineas; and 6*d.* in the pound on their earnings towards the support of the pilots' fund.—s. 4.

Notice of the appointment of pilots is required to be fixed up at the Trinity House, and the Custom House, and published in the London Gazette, and the newspapers. And such insertion in the Gazette is good evidence of the appointment.—s. 6. And the corporation of the Trinity House are empowered to make by-laws for the regulation of such pilots, to be hung up at the Custom House and the Trinity House—ss. 11, 12 and 13; and persons applying for licences are required to execute a bond for securing obedience thereto.—s. 27.

In pursuance of this power, the Trinity House passed a set of by-laws on the 19th of April, 1826, by which, amongst other things, it is provided, "that every pilot taking charge of any ship from the Thames to the Downs, or elsewhere, shall, without any additional compensation, wait on board for the space of three complete days, while the ship is detained at Gravesend, or elsewhere, for want of seamen or any other casualty; nor at the end of such three days can the pilot quit the ship, or receive any additional compensation, if she shall be further detained by winds, weather or tides; and should the ship be further detained beyond three complete days on any other account, except winds, weather or tides, the pilot having the charge thereof, must nevertheless still (if required so to do) remain in charge, at a compensation of six shillings a day."

The pilots licensed by the Trinity House for the port of London are comprised in four classes, *viz.* —

First. The *Channel Pilots downwards*, who are licensed from *London Bridge* down the river *Thames*, and the *North* or *South*, and *Queen's Channels* (as the case may be) to *Orfordness*, or *the Downs*, and into *Harwich* or *Ramsgate Harbours* (c).

Second. The *River Pilots*, licensed from *London Bridge* down the *Thames* to *Gravesend*, and *vice versâ*.

Third. The *North Channel Pilots* upwards, of whom a prescribed number are stationed at *Yarmouth*, *Lowestoft*, *Southwold*, *Aldboro'*, *Orford*, and *Harwich*, and who are all licensed from *Orfordness* up the *North Channel* and the river *Thames* to *Gravesend* and *London Bridge*; and some are further licensed from *Southwold*, *Lowestoft*, *Smith's Knowl*, and *the Dudgeon* to *Orfordness*, respectively.

Fourth. The *Sheerness Pilots*, who are licensed for the river *Medway*, from the *Nore* to *Chatham*, and *vice versâ*, some of whom are also licensed from the *North Foreland* up the *Thames* to *Gravesend*.

The rates in Tables (A and B) of schedule (A) of the act may be demanded by pilots, and no greater or less, under a penalty of £10 for every offence—6 Geo. IV. c. CXXV. s. 25; which rates may be varied by the Trinity House, with the consent of the privy council—s. 26.

Pilots' licences may be revoked, annulled or suspended at the discretion of the Trinity House—s. 29; and any such pilot, or the person complaining against him, may, if dissatisfied with the adjudication of the Trinity House, appeal to the privy council—s. 30. Regular pilot vessels are authorized to be licensed for service at sea, under the care of licensed pilots—s. 31, distinguished by par-

(c) The greater number of the Channel pilots are licensed for both the North and South Channels; and some are further licensed from the

Downs westward as far as the Isle of Wight, and from the Isle of Wight to the English Channel and London Bridge.

ticular marks and flags (*d*), and marked at the stern with the name and number of the pilots—s. 32. A list of all pilots to be annually transmitted to the Trinity House and Custom House—s. 35; and of such pilot boats, with the number of hands on board, to the receiver of the sixpenny duty in the port of London—s. 37.

No pilot can be taken to sea beyond his limits, without his consent, except in case of necessity, and then he is entitled to receive 10s. 6d. per diem beyond his regular charge.—s. 38. Pilots licensed from any place to the westward up to London Bridge must qualify themselves and conduct ships into and out of Ramsgate, Sandwich and Dover harbours, under pain of forfeiting pilotage in addition to other penalties—s. 39; but are entitled to compensation for their trouble to 5s. per foot of draught of water of the ship or vessel—s. 40. Ships bound to the Thames repairing to places for performance of quarantine to pay full charges of pilotage, &c.—s. 41; but pilots quitting ships in the Thames or Medway, without consent, before arrival at their destination, to forfeit pay, and other penalty—s. 42.

Every pilot is required to write his name in the log-book, and same to be inserted in report of ships entering the port of London, and reported daily to the Trinity House, and monthly to lord warden of Cinque Ports; and the principal searcher or clearing officer of the customs at Gravesend is required to demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of London, and transmit monthly lists of such names to the Trinity House.—s. 43.

Pilotage of ships having British registers, trading to and from the port of London, may be recovered as penalties by distress or action—s. 44; and consignees or agents

(*d*) *Viz.* painted black with the upper streak next the gunwale white; and while afloat, to carry a large white and red flag in horizontal

stripes at the mast head, or on a sprit or staff, or other conspicuous situation.—s. 32.

are authorized to retain the pilotage which they have paid or are liable to—s. 45.

The pilotage both inwards and outwards of other vessels to be paid at the Trinity House, or to the agents, within fourteen days after reporting inwards, to be legally applied, or may be recovered from the person in command in manner aforesaid—s. 46; and no such vessel can clear outwards without certificate of pilotage being given—s. 47. The rate of payment of such pilotage to be regulated and ascertained by the Trinity House, and the surplus receipts to be applied in rewarding unlicensed persons serving in the absence of licensed pilots, and in relief of indigent pilots.—ss. 48 to 52.

No owner or master of any ship or vessel is answerable for any loss or damage happening to any person by reason or means of no licensed pilot, or of no duly qualified pilot, being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means, consistent with her safety, for the purpose of taking on board any pilot who shall be ready and offer to take charge of the same.—s. 53. The owner in no such case to be liable for any loss or damage beyond the value of the ship or vessel, and her appurtenances, and the freight due or accruing due during the voyage—s. 54; and no such owner or master is answerable for any loss or damage happening to any person or persons, from or by reason or means of the neglect, default, incompetency, or incapacity of any licensed pilot *acting in the charge of any such ship or vessel, under that act, where and so long as such pilot shall be duly qualified to have the charge thereof, or where and so long as no duly qualified pilot shall have offered to take charge thereof*(e)—s. 55.

(e) It was at one time contended, that the protection given to the mas-

These provisions are, however, declared not to deprive persons of remedies previously existing—s. 56; and licensed pilots who have executed the ordinary bond, are declared not to be liable for neglect or want of skill beyond its penalty and the pilotage—s. 57.

Masters of colliers, or vessels of British register, trading to *Norway*, or the *Categat*, or *Baltic*, or round the *North Cape*, or into the *White Sea*, on their inward or outward voyages, or any constant trader inwards, from the ports between *Boulogne*, inclusive, and the *Baltic*, (all such ships and vessels having British registers, and coming up by the *North Channel*, but not otherwise,) or Irish traders using the navigation of the *Thames* and *Medway*, or vessels employed in the regular coasting trade of the kingdom, or vessels wholly laden with stone, from *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, or British register vessels, or others by order of privy council under 60 tons burthen, or any other vessels within the limits of the port where registered, or the master or mate being part owners of vessels within the jurisdiction of the Cinque Ports, to be at liberty to pilot their own vessels without licensed pilots.—ss. 59—62.

When any ship or vessel shall have been brought into port by a licensed pilot, the master or mate or other person in command, or if in ballast, any person or per-

ter and owner by this section did not apply, unless in cases where the provisions of the act made it compulsory to employ a pilot. This question was raised in *Mackintosh v. Slade*, 6 B. & C. 657, where the ship having put into the *London Docks*, but not having broken bulk there, was afterwards removed, under charge of a pilot, to a quay higher up the river to discharge, and, in the act of so removing, the accident occurred through the default of the pilot; and the plaintiff contended

that, under the 63rd section, it was not compulsory on the defendant to employ a pilot, and consequently the indemnity given by the present section did not apply; but the court decided it was compulsory, and gave no opinion on the other point. In a more recent case it has been now decided that the indemnity, given by the 55th section, extends to all cases when a pilot is on board, whether obliged to be so or not. See *Lucey v. Ingram*, 6 M. & W. 302.

sons appointed by the owner, master, or agent, may afterwards legally remove such ship or vessel in such port for the purpose of entering into or going out of any dock, or for changing the moorings.—s. 63 (*f*).

Masters or persons in command reporting to pilots a false account of vessels, of a vessel's draught of water, or altering marks denoting such draught, are subject to a penalty of £5.—s. 64. The description of every pilot is required to be written on his licence—s. 65; and no pilot can act until such licence has been duly registered, nor without producing it—s. 66. Licences to be delivered up when required, and in case of death must be returned to the proper authorities.—s. 67. Pilots keeping public houses, &c. (unless duly authorized so to do), or offending against the revenue laws, &c., to forfeit their licences and be suspended—s. 68; and in such case be subject to the penalties of the act for acting as pilots—s. 69. Licensed pilots, within the limits of their licence, may supersede unlicensed pilots; and any person acting as a pilot after such licensed pilot has offered to take charge of the ship, is subject to a penalty of not exceeding £50, nor less than £20.—s. 70 (*g*).

The lord warden of the Cinque Ports, and the society of the Cinque Port pilots, are invested with similar powers for the licensing and regulation of pilots, to conduct ships and vessels coming from or by *Dungeness*, up the *Thames* and *Medway* to *London Bridge* and *Rochester*

(*f*) The provisions of this section were practically acted up to under the old statutes, which, however, contained no such clause. See *Res v. Lambe*, 5 T. R. 76, and *Nolan's R.* 156; *Res v. Neale*, 8 T. R. 241; as to what is a changing the moorings, see *Mackintosh v. Slade*, 6 B. & C. 657, last note.

(*g*) The master of a vessel, however, is not precluded from employing a steam-tug, or other *moving*

power, and if that cannot be done without necessarily devolving upon the latter the regulation of the course, and a certain portion, or, indeed, all the charge and conduct of the vessel in that course, still, if the *bond fide* object of the employment be the *moving* power, the person so employed is not a pilot within the meaning of the act. *Beilby v. Scott*, 7 M. & W. 93.

Bridge, or any channels, creeks and docks belonging thereto, and from the south buoy of the *Brahe* to the westward, as far as the west end of the *Owers* (*h*)—ss. 14, 15, 21; but no such pilot can take charge of a ship drawing more than 11 feet 6 inches water until after having been licensed and in actual practice for three years, or if drawing 14 feet until after five years; or 17 feet, seven years—s. 16; and a certain number of Cinque Port pilots are required to be constantly at sea on the look-out for ships; and all masters of ships, not having a pilot on board, are required to display a signal for one, and to facilitate his getting on board—ss. 18, 19.

Heavy penalties are inflicted on pilots for employing or requiring the employment of any boat beyond what is necessary, in order to incur expense—s. 73; for lending licence, and for drunkenness, and for conducting any vessel into danger, or injuring the same, or obtaining charge thereof by misrepresentation—s. 74; or for not obeying the orders of the dock masters—s. 75. The act directs the mode in which the penalties are to be recovered, and the mode of conviction and appeal, &c.—ss. 76—84; and contains the usual directions as to the limitation of actions, &c., and a reservation of the rights of the court of *loadmanage*, the admiralty, the City of London, and all separate jurisdictions.

Watermen and Lightermen.—The watermen and lightermen of the river Thames are an incorporated company, under the superintendence of the civic authorities, and

(A) The Committee of the House of Commons, in 1833, on the Cinque Port Pilots, recommended the adoption of a uniform system for the regulation of all pilotage into and out of the port of London. The Deal boatmen, a class so important to the shipping entering and departing from the *Thames*, or coming from or proceeding to the

North Seas, as well as to the cause of humanity, often perilling their lives in cases of shipwreck without any claim to reward, are now in a deplorable state of poverty, owing to the exclusive privileges of the pilots, and the committee recommended that the former still be allowed the privilege of piloting vessels under proper regulations.

regulated wholly by acts of parliament; the earliest of which was passed (*k*) in the reign of Henry VIII., and merely related to the fares. Numerous subsequent statutes (*l*) have reduced them under systematic control,—a measure which was, perhaps, formerly even more essential than at present.

By the 7 & 8 Geo. IV. c. LXXV., the statute now in force, it is enacted that no person, not being a freeman of the Watermen's Company, by having served a seven years' apprenticeship—s. 28, or being still apprentice to a freeman or widow of a freeman (except as thereafter mentioned), shall act as a waterman or lighterman, or ply, or work, or navigate, or cause to be worked or navigated, for hire or gain, any wherry, lighter, or other craft (*m*) upon the river Thames, from or to any place or places, or ship or vessel, within the limits of the act, that is to say, from the town of New Windsor, to Yantlet Creek in the county of Kent, or any dock, canal, creek or harbour, of or out of the said river, so far as the tide flows therein—s. 3, (except as thereafter mentioned,) under a penalty not exceeding £10 for every offence—s. 37; and the recent Metropolitan Police Act (*n*) subjects to the provisions of the above statute, persons using, working, or navigating boats upon the river Thames for the purpose of selling liquors, slops, or other articles, between London Bridge and Limehouse Hole, among seamen or persons employed about ships or vessels on the river.

No freeman or widow can, under a penalty of £10, have more than two apprentices at the same time, or take a second apprentice until the first has served four

(*k*) 6 Hen. VIII. c. 7.

(*l*) 2 & 3 Ph. & Ma. c. 16; 1 Jac. I. c. 16; 11 & 12 Will. III. c. 21; 4 Ann. c. 13; 2 Geo. II. c. 26; 4 Geo. II. c. 24; 10 Geo. II. c. 31; 34 Geo. III. c. 65.

(*m*) Every steam-boat running for hire within the limits has, in pur-

suance of this act, a free waterman on board, but it is not considered necessary for the crew to be watermen. See Evid. of Mr. Banyon, before Port of London Committee, 1836, p. 257.

(*n*) 2 & 3 Vict. c. 47.

years; but if the freeman or widow be owner of twelve barges, lighters, or flat-bottomed craft, three apprentices may be taken at one time; and the owner of twenty barges, &c. may take four apprentices.—7 & 8 Geo. IV. c. LXXV. s. 29. Each apprentice must be between the age of fourteen and eighteen, of which due proof must be given.—s. 30. A register must be kept of the places of abode of the master or mistress, and the apprentice be lodged with them—ss. 32, 33, either in their own houses or in a decked craft or vessel, or with a foreman, if the master be owner of twelve craft. The apprentice can be compelled to serve, notwithstanding he is under age—s. 35; but all apprenticeships against the provisions of the act are declared void—s. 34. No apprentice under two years' standing can be left in sole charge of any boat or other vessel.—s. 36. No boats to be used for carrying passengers without a licence expressing the number of persons it may be allowed to carry—s. 38; the number and name of owner to be painted thereon. The names of persons keeping boats, &c. for carrying goods without passengers (except as after mentioned), and also the names of such boats, to be registered in the company's books—s. 39, and painted on the boats, whether the owners live within the limits or not.—s. 40.

The court of aldermen and the master, wardens and assistants of the Watermen's Company are empowered to make by-laws—ss. 56—60, to regulate the Thames watermen; and the former have the power to fix the fares—s. 61, which must be advertised in the London Gazette, and otherwise made public; and a penalty of 40s. is inflicted for taking more than the fare—ss. 62—64; and a copy of the by-laws and list of fares is required to be kept in every boat, under a penalty of £5—s. 66. Watermen are bound under the like penalty to take a fare when offered—s. 67, and to be guilty of no delay in proceeding with it; and to allow all persons to read their names or numbers, and to give up the same when demanded by a passenger; and must not use any scurrilous

or abusive language—s. 69. And jurisdiction is given to any alderman of London or justice of the peace for the counties adjoining the river to enforce the penalties in the act or by-laws—s. 74; or to award satisfaction for damages done to any boat or craft, not exceeding £5—s. 89.

But persons employed in the docks, or in privileged ferries, or in flat-bottomed barges from Kingston-upon-Thames, or beyond, commonly called Western barges, or in boats belonging to owners of lay-stalls, and market gardeners, or chalk hoys, or fishing, or ballast boats, are not within the act—ss. 96—104, unless they ply for hire—ss. 96—105; nor are lighters belonging to private individuals, if they are navigated by watermen.

The by-laws made under the act of parliament have very minute directions for the regulation of the watermen, and also the management of all craft navigating above bridge; and an additional set of by-laws, made 29th March, 1836, fix the dimensions of wherries and boats to be henceforth used, according to the altered state of the river, caused by the increase of steam navigation.

By statute 8 Eliz. c. 13, entitled “An Act concerning Sea-marks and Mariners,” the corporation of the Trinity House were empowered to license men to act as mariners on the Thames, and this power is reserved by the Watermen’s Act—s. 70; but the licensed Trinity mariners are declared subject to the same penalties as other watermen, and the Trinity House are empowered to make by-laws to regulate them (o).

(o) The inhabitants of Milton and Gravesend had formerly the monopoly of the passage by water from thence to London. They were incorporated in the 10th year of Elizabeth, by the name of the portreve, jurats, and inhabitants of Milton and Gravesend, with power to make by-laws for the regulation of the

ferry. They were accustomed to provide watermen, steersmen, and rowers, and a barge, and used to take of every person, for himself and fardel, 2d., and to sail when the fares amounted to 4s. Many watermen, however, had so far infringed this privilege, as to ply, and take in poor passengers before the barge

was full, and, in consequence, the latter was often delayed to make up the requisite number; a by-law was, therefore, made in pursuance of the above power, imposing a penalty of 2*d.* for every passenger so taken by any waterman before the regular barge was full; which by-law, being contested, was adjudged void, and the monopoly thus far destroyed. Brownl. & Gold. pt. 2, 177; and

Str. 466. But the ancient passage boats are still under local regulations; and a court is held by the lord of the manor of Gravesend, called *Curia Curus Aquæ*, for the better government of barges, boats, and vessels using the ferry or passage from Gravesend to London, and the privileges of the ferrymen are still preserved. 7 & 8 Geo. IV. c. LXXV. ss. 95, 96.

CHAPTER XXI.

THE QUAYS, WHARFS, AND DOCKS, AND REGULATIONS OF
THE CUSTOM-HOUSE.

THE king of England was, from a very early period, entitled to certain duties under the name of *magna* and *parva custuma*, which were the commencement of that vast revenue now annually raised for defraying the national expenses. The former was a tax on all wools, woolfels and leather imported or exported (*a*); and the latter, though commonly so called, cannot be considered in the nature of customs, but rather as tolls or dues paid for the use of public works, as bridges, highways, quays, &c. (*b*), which, by various charters confirmatory of ancient usage, the citizens of London were exempt from (*c*).

In order to secure the due payment of the former, it was one of the royal prerogatives to appoint ports or havens which were called the inlets and gates of the realm (*d*); and as early as the reign of King John, we find ships seized by the officers of the crown, for putting in at a place not being one of the legal ports (*e*), which were subsequently referred to as well known and established in the statute 4 Hen. IV. c. 20, and the landing elsewhere prohibited under pain of confiscation.

Besides the mere designation of the ports themselves, the crown was in the habit of fixing upon particular

(*a*) Dier. 1 Eliz. 165; 4 Inst. 29; Dav. 8 b. 9 b.

(*b*) Hale's Dissertation concerning Customs; Hargr. Tracts, ch. 4.

(*c*) Charters of Hen. I., Hen. II., 1 John, 4 Hen. III., 7 Hen. III.; *ante*,

p. 67; Norton's Com. pp. 364, 421.

(*d*) 1 Bl. Com. 264; Dav. 9, 56; Hale de Port. Mar. pt. 2, c. 3; 1 Hargr. Law Tracts, 53.

(*e*) Mad. Hist. of Exch. 530; authorities in next note.

situations as landing places, where the *parva custuma*, or toll for landing, was collected. Thus *Queenhithe*, in *Thames Street*, was, from a very early period, used for this purpose, and the petty customs collected there were usually granted to the Queen (from which circumstance it derived its name). *Queenhithe* is called one of the *portus regni* in old records, and the constable of the Tower was enjoined to arrest all ships landing corn at any other place (*f*); and an account of the ancient customs payable there is preserved in the city books (*g*). This monopoly was, however, clearly illegal. When once a port or haven was legally established, the crown had no power at common law of narrowing its limits, but goods might be landed or shipped at any part of the haven which was most convenient (*h*); and the citizens of London being exempt from all tolls or petty customs (*i*), the exaction was the less justifiable. When, therefore, to settle all disputes, this quay had been purchased by the civic authorities from the crown (*k*), other more convenient wharfs and landing places were erected, and the monopoly was gradually destroyed (*l*). This, however, gave rise to the shipping and landing at blind and unknown wharfs and places, in order to evade the payment of the customs, and the revenue of the crown became seriously affected (*m*); and to remedy this, the statute 1 Eliz. c. 11, compelled all goods to be landed and shipped between sunrise and sunset in *such open places* as should be ap-

(*f*) Pet. le Neve, 9 Hen. III. m. 15; *id. ib.*; Rot. Claus. 11 Hen. III. m. 15; Strype's Stow, lib. 3, p. 214.

(*g*) Lib. Horne, fol. 242, 246, 298 b. These were, no doubt, very considerable, as long as the monopoly remained, but Fabian relates, that in Henry Seventh's time, they barely amounted to £15 per annum. Strype's Stow, *ubi sup.* Billingsgate had, from a very early period,

been used as a landing place, where vessels paid duty, see And. Hist. of Com. vol. 1, p. 52; and on the decay of Queenhithe it became a principal port.

(*h*) 1 Bl. Com. 264; Hargr. Law Tracts, 99.

(*i*) *Ante*, p. 353.

(*k*) See 6th charter of Hen. III. mentioned *ante*, p. 89.

(*l*) *Ante*, note (*g*).

(*m*) Molloy, l. 2, c. 15.

pointed by royal commission before the 1st of September, 1559, and a commission was accordingly issued under the exchequer seal, assigning wharfs and quays in London and other places for this purpose (n).

By the statute 13 & 14 Car. II. c. 11, the crown was further empowered to issue commissions for defining the limits of the different ports, and appointing open places therein for landing and discharging goods; and all persons were prohibited from landing or discharging *elsewhere* without the special *sufferance* and leave of the commissioners of customs.

In pursuance of this statute, a commission was issued for London after the great fire, and the commissioners made their certificate on the 24th of May, 1665: by which, amongst other things, "To prevent all future differences and disputes touching the extent and limits of the Port of London, and the many frauds and abuses which had been acted and committed as well upon and within the river of Thames, as without the mouth thereof upon the sea, the said port was declared to extend and be accounted from the promontory or point called the *North Foreland*, in the Isle of Thanet, and from thence northward in a

* (n) See the Commission and Return for London, in Strype's *Stow*, App. 2, p. 49, dated 28th August, 1 Eliz. The following were appointed to be general lading and discharging places for all kinds of goods, viz. Old Wool Quay, New Wool Quay, Galley Quay, Andro Morris Quay, Amb. Thurston's Quay, Rauff's Quay, Cocks' Quay, Dyce Quay, Bear Quay, Somers' Quay, Botolph's Wharf, Sab's Quay, Young's Quay, Crown Quay, Smart's Quay, Fresh Wharf and Gaunt's Quay.

Billingsgate was appointed only for fish, corn, salt, stones, victuals, and fruit (grocery wares excepted).

The *Three Cranes* for wine and oil, and, together with Johnson's Quay and Bushers' Wharf, for pitch, tar, flax, iron, wainscot, clapboards, deals, ores, rafters, ashes to make soap, osmunds, eels, cables, hawsers, hemp, stones, chests, playing tables, fish and hops, woollen cloths not exceeding £6 in value, and coney skins.

Wood, coals, and beer, might be landed or shipped in any place, in the presence of the searcher or his servants.

The *Bridge House* for corn and other provisions; and the *Steelyard* for merchant strangers free of that guild.

supposed right line to the opposite promontory or point called the *Nase*, beyond the *Gun-fleet*, upon the coast of Essex, and continued westward, through the river Thames, and the several channels, streams, and rivers falling into it, to *London Bridge*, save the usual and known rights, liberty and privilege to the ports of *Sandwich* and *Ipswich*, and either of them, and the known members thereof, and of the customers, comptrollers, searchers, and other deputies within the said ports of *Sandwich* and *Ipswich*, and the several creeks, harbours, and havens to them or either of them respectively belonging, within the counties of Kent or Essex" (o). And certain wharfs in London, consisting for the most part of the former landing places, were assigned as *legal quays* for landing and shipping goods, subject to duty, the exact metes and bounds of each being set forth (p); and plans were proposed to carry into effect the clause of the Rebuilding Act (q), by which it was provided that there should be left a continued tract of ground from London Bridge to the Temple, of the breadth of forty feet of assize, from the north side of the Thames, to be converted to a quay or public and open wharf—s. 44, which was to lie open and at large, without any division or separation, and the bounds of each proprietor's ground therein should be distinguished only by *denter stones*, to be placed on the pavement; and no lighter, boat, or other vessel, should lie before any of the said wharfs or quays between the places aforesaid, on the north side of the river, longer than should be neces-

(o) See Beawes' *Lex Mercat.* 6th ed. 249; Strype's *Stow*, lib. 5, p. 283. It appears that these limits will now be judicially noticed. See *Leaper v. Smith*, Bunb. 79; *Williams v. Marshall*, 2 Marsh. 92; 6 Taunt. 390; *Dalglish v. Brooke*, 15 East, 304.

(p) Viz. *Chester's Quay*, *Brewer's Quay*, *Galley Quay*, *Wool Dock*, *Custom House Quay*, *Bear Quay*,

Porter's Quay, *Sab's Quay*, *Wigan's Quay*, *Young's Quay*, *Ralph's Quay*, *Dice Quay*, *Smart's Quay*, *Somers' Quay*, *Hammond's Quay*, *Lyon's Quay*, *Botolph Wharf*, *Gaunt's Quay*, *Cos's Quay*, and *Fresh Wharf*. *Lex Mercat.* 132, 133; Rot. Scacc. 19 Car. II.; and Strype's *Stow*, lib. 5, p. 281.

(q) 22 Car. II. c. 11.

sary for the lading or unlading of goods, without the consent and permission of the wharfingers or proprietors—s. 45; but any person was authorized to lade or unlade any goods or merchandize at any of the said wharfs or quays, for wharfage or cranage, according to the rates from time to time settled by order of privy council—s. 46; a table of which rates was directed to be hung up at each of the legal quays.

The immense revolution which afterwards took place in the nature of the trade of the Port of London by means of the East India, and various other commercial companies, rendered the old system totally inadequate for the accommodation of the shipping, which may be readily imagined from the circumstance, that in the reign of Elizabeth, when the legal quays were first assigned, the whole of the customs of the Port of London, which now amount to upwards of £11,000,000, were farmed out for the sum of £20,000 per ann. (r).

The provision for leaving a vacant space for wharfs above London Bridge was never strictly enforced, and is now repealed by the 1 & 2 Geo. IV. c. 89. But on each side of the river, private wharfs were gradually established for home produce, though, with the exception of those which were constituted *sufferance wharfs* by the commissioners of customs, none were authorized to receive goods liable to duty.

In 1762, upon the application of a number of the principal merchants of London, a commission was issued in pursuance of the above statute of 13 & 14 Car. II. c. 11, directed to certain persons therein named, to assign and set out fit and convenient places, for extending the legal quays in the Port of London, upon a suggestion that the latter were not sufficient for the purposes of trade and navigation; and the commissioners shortly after returned

(r) Strype's Stow, Appendix 2, p. 51. The gross produce of the customs in the Port of London, in the year ending 5th January, 1839, were £11,254,734 4s. 8d.; and for 1840, £11,431,245 1s. 2d.

a large extent of ground, including the Tower-ditch, or so much as his Majesty should think fit (s); but this return was, on the 11th of February, 1763, quashed by the Court of King's Bench for uncertainty; but the court were, nevertheless, of opinion, that the expedience of an extension was wholly in the breast of the crown. After many hearings before the lords of the treasury, and disputes with the commissioners of customs, another commission was issued on the 7th of March, 1765 (t), directing the assignment of a certain spot in the parish of *St. Katharine's*, between *Irongate Stairs* and the *King's Brewhouse*, for this purpose; such extension being necessary and expedient. The commissioners in the following month returned and assigned a part of the said spot, setting forth its situation and dimensions, to be from thenceforth legal wharfs, with many provisions for the regulation thereof.

In the ensuing Easter Term, application was made to the court to stop the filing of the said return till all parties could be heard upon it; and accordingly the case was argued on two several days in Trinity Term on behalf of the corporation of London, the proprietors of the old legal wharfs, the proprietors of sufferance wharfs, and the inhabitants of *St. Katharine's*, who all desired the commission and return to be quashed; and by the counsel of the merchants and commissioners, who prayed the same to be filed and allowed; and after a very lengthy argument, the commission was adjudged not well founded, the places assigned for the new wharfs not being *open places* (u).

In addition to the legal quays, the commissioners of customs had licensed several wharfs as *sufferance wharfs* (x), under the act of parliament; but these were very inade-

(s) See this commission and return set forth at large in Report of Committee of House of Commons on the Port of London. 1796, Appendix, K. k.

(t) *Id. ib.* Appendix, L. l.

(u) See case of the London Wharfs, 1 W. Bl. R. 581.

(x) See a list of these in 2nd Rep. of Select Committee on Port of London, p. 134, App. (C. 4).

quate to the wants of such a port as London; various committees in parliament were appointed to inquire into the matter, and at length a plan, which had succeeded in raising Liverpool, a previously inconsiderable place, to be in a great degree the rival of the metropolis in trade, the establishment of *wet docks* for the accommodation of shipping, was adopted; and, indeed, it seems strange that this should not have been the case before, when we find that wet docks had been established at Liverpool since the year 1708, and found so successful in preventing both the delay of waiting for accommodation at the legal and sufferance wharfs, and the risk, if not the certainty, of depredation (*y*) in unlading valuable cargoes into lighters in the river, as well as accidents from the very crowded state of the port.

The first plan for wet docks in London was projected in 1793, and after a strenuous opposition from private wharfingers, and others interested in the existing system, the London and West India Docks were both commenced about the year 1796, and since that time there have been added to them the East India and Saint Katharine's, with the Commercial and East Country, and Grand Surrey Docks, of minor importance.

By the original London Dock Act (*z*), the wharfs and quays belonging to those docks were declared to be legal quays for landing and shipping tobacco and rice, not the produce of the East or West Indies, or wine or brandy, not imported in ships from the East or West Indies; and all vessels arriving in the Port of London having on board a certain quantity of such wine, or brandy, or rice, were compelled to unlade and land the whole of their respective cargoes within such docks, under penalty of forfeiture to the crown, and £100 from the owner or master of the vessel.—s. 67.

The West India Docks were confined to West India

(*y*) This was stated to amount in £200,000 a year.
West India produce alone to at least

(*z*) 39 & 40 Geo. III. c. XLVII.

vessels, all of which were compelled to discharge there; and if remaining above the entrance to the canal at Blackwall, to load there also (a).

By the East India Dock Act (b), which was passed a few years after, vessels arriving in the Thames with cargoes of produce from any part of the East Indies or China, were obliged to discharge their cargoes at those docks, except such part of the cargo as might be directed by the commissioners of customs to be discharged into lighters or other craft in the employ of the East India Company, at Long Reach, for the purpose of lessening the draft of water. The goods so discharged, being produce from the East Indies or China, in respect of which duties were payable, were to be afterwards deposited in the warehouses of the East India Company, according to the laws in force in relation to goods imported from that quarter of the world.—ss. 63, 119; and vessels outward bound to the East Indies or China were obliged to take in their cargoes either in the East India Docks, or in the river below Limehouse Creek, under a penalty of £200—s. 65; and no vessel not having immediately come from, or being immediately bound to, the East Indies or China, or employed in conveying goods to or from a ship so circumstanced, or not engaged in the repairs of the docks, could, under a penalty of £50, enter these docks, without the consent, in writing, of the treasury—s. 66.

In the same year in which the above East India Dock Act was passed, an alteration took place in the custom-house regulations, which has been productive of the most important consequences, not only to this port, but to the commercial interests of the country at large. Previously to this period, the duties on most goods imported had either to be paid at the moment of importation, or a *bond*, with sufficient security for their future payment, had to be given to the revenue officers; thus crippling

(a) 39 Geo. III. c. LXIX. ss. 87, (b) 43 Geo. III. c. CXXVI.
et seq.

the resources of the merchant, and even in some cases actually prohibiting a most important national object, that of making this country an *entrepôt* for goods for foreign consumption (c).

The foundation of a new system was laid by the statute (d) alluded to, the provisions of which have been improved upon by various subsequent enactments, and are now all embodied in the general act, 3 & 4 Will. IV. c. 57, empowering the commissioners of customs to allow goods to be warehoused by the consignees before payment of duty, and retained there for the purpose of sale, under certain regulations, too diffuse to be here inserted.

Until the year 1824, however, the above three docks had the exclusive privilege of receiving vessels engaged in the various and important branches of trade which have been referred to; but other docks were also established in their neighbourhood for the accommodation of shipping not belonging to those classes, such as the *Commercial Docks* at Rotherhithe, established by the 50 Geo. III. c. CCVII., which did not constitute them legal quays, or authorize goods to be landed without the special sufferance of the commissioners of customs; the *Grand Surrey Canal and Docks* by 48 Geo. III. c. XCIX., and the *East Country Docks*, established by the 51 Geo. III. c. LXXI. On the expiration of the privileges of the three principal dock companies in the above year, the new commercial code of the country under the warehousing system, as well as a want of increased wet-dock accommodation near to the seat of business, suggested the design of the present *St. Katharine's Docks*, which were established by the statute 6 Geo. IV. c. CV.

The four principal docks, and all the quays and wharfs belonging thereto, are declared by their respective acts

(c) M'Culloch's Commercial Dict. 1750.
tit. Warehousing System; and (d) 43 Geo. III. c. 132.
Tucker's Essay on Trade, published

of parliament to be legal quays, to all intents and purposes, and goods landed there are subject to the same regulations as at other legal quays (*e*): and the whole of the warehouses within the walls are places of *special security* under the Warehousing Act.

By the last Customs Regulations Act (*f*) the power given to the crown by the statute of Charles II. (*g*), to define the limits of ports and havens, and appoint legal quays for landing and shipping, is confirmed, but the ancient legal ports and quays are declared to continue as before. By statute 43 Geo. III. c. CXXIV. confirmed by several subsequent statutes (*h*), the treasury were authorized to purchase the old legal quays between London Bridge and the Tower, for the purpose of rebuilding the Custom-house and making other improvements; but under two recent statutes, those which were not required for this purpose have been since resold to private individuals, subject to the same regulations as previous to their purchase (*i*); and under the Warehousing Act, various other places have been licensed as uptown warehouses, sufferance wharfs, and bonded granaries, the privileges of which are limited by their respective licences, and an account of them has lately been made public by the commissioners of customs (*k*).

(*e*) See for London Docks, 9 Geo. IV. c. CXVI. s. 112; East India Docks, 46 Geo. III. c. CXIII. ss. 13, *et seq.*; West India Docks, 1 & 2 Will. IV. c. LII. ss. 89, *et seq.*; and St. Katharine's Docks, 6 Geo. IV. c. CV. ss. 92, *et seq.*

(*f*) 3 & 4 Will. IV. c. 52, s. 139.

(*g*) *Ante*, p. 355.

(*h*) 46 Geo. III. c. 118; 47 Geo. III. sess. 2, c. 60; 50 Geo. III. c. 22; 52 Geo. III. c. 49; and 54 Geo. III. c. 45.

(*i*) 1 & 2 Will. IV. c. 50; 2 & 3 Will. IV. c. 66; and 3 & 4 Will. IV. c. 8.

(*k*) *Vis.* The warehouses of *Custom House Quay* are approved for the deposit of all goods, except tea, tobacco and cigars, spirits in casks, and wine exceeding the content of twenty pipes, whether the import ships discharge their cargoes at the docks or otherwise. The other legal quay warehouses are privileged as under, *vis.* *Brewer's Quay*, *Chester's Quay*, *Galley Quay*, *Botolph Wharf*, *Coxe's Quay*, *Fresh Wharf*, and *New Quay*, for the same goods, provided the import ships discharge their cargoes in the river; and the warehouses of *Nicholson's Wharf*

The ample accommodation afforded by these various means for the shipping and commerce of the Port of London, has enabled the warehousing system to be carried out to a most beneficial extent; and whilst the actual seat of business remains the same, though the amount of it is every day increasing, the transactions of the merchant are no longer confined within the walls of his own warehouses, but may be equally well conducted on the Exchange, or at the public coffee-houses, where a sort of market is in fact held every day, and property to the value of thousands of pounds sterling change hands without an original outlay in the shape of duty, &c. of a single farthing, or in fact anything more being done with the goods than getting a proper transfer made in the dock companies' books, the warrant or authority for which is become a mercantile instrument, negotiable for all pur-

have the same privilege, and also for the deposit of tea. If the import ships discharge their cargoes at the docks, a long list of articles is given which cannot be warehoused at the legal quays, or uptown warehouses.

The *uptown warehouses* of the *East and West India Dock Company* in Billiter Street, Crutched Friars, Jewry Street, and Fenchurch Street; and those of the *St. Katharine's Dock Company*, in Cutler Street, for the deposit of all goods imported from within the limits of the East India Company's charter. *Colebatch's* warehouses, in Globe Yard, the same as *Brewer's Quay*, &c., except certain articles in case of vessel discharging in docks. *Aylwin's* in Lower Thames Street, *Lingham's* in Thames Street, *Smith's* in Cross Lane, *Gooch's* in Leadenhall Street and Steel Yard, *Cooper and Spratt's* in Ducksfoot Lane and Chequer Yard,

and *Pearson and Price's* in Chequer Yard, for all except particular kinds of goods. There are about a dozen other uptown warehouses in London, whose privileges do not extend to house other than certain specified goods, such as fruit, wool, hides, &c. The *sufferance wharfs* in London, appointed by the commissioners of customs pursuant to the 3 & 4 Will. IV. c. 52, s. 14, amount altogether to about seventy; and their privileges, like the bonded warehouses, are limited to particular goods, which may be seen by reference to a notice of the commissioners of customs lately printed and circulated, wherein the particulars of the goods privileged to be landed and housed at each wharf are specified. The bonded granaries are numerous, and licensed only for corn, grain, meal, flour, and other ground corn; and most of them also for rapeseed, hempseed, linseed, and tares.

poses, whether of sale or exchange, as one of the most substantial securities which can be offered (*l*).

The general regulations of the Custom-house in London are not so different from those established at other ports as to render it necessary to describe them very minutely here, but some further notice of them is necessary in order to make this part of our subject intelligible (*m*).

(*l*) See *post*, tit. Colonial Market.

(*m*) Anciently the crown had 2 receivers of customs in every port. 2 Rol. Abr. 176, l. 50. In 1572, there were attached to the Port of London, 4 collectors, 2 comptrollers, and 1 surveyor, 16 tidewaiters, and 1 searcher, with several deputies. Strype's Stow, Appendix 2, p. 51. The board of commissioners is now directed to consist of not exceeding 11 persons, and the officers under them are appointed under the direction of the treasury. 3 & 4 Will. IV. c. 51, s. 2. The whole establishment, in London, consists of 9 commissioners, secretary and assistant, and 3 chief clerks.

Secretaries office, 3 chief clerks assistant, and 35 under clerks, officers, and servants.

Law Officers, consisting of 2 solicitors, chief clerk, under clerk, and messengers.

5 *Surveyors general*, and clerks.

1 *Receiver general*, assistant, and clerks.

1 *Comptroller general*, assistant, clerks, and messengers; accountant, auditor, clerks, and messenger.

1 *Inspector and examiner of plantation accounts*, clerks, and officers.

1 *Inspector general of exports and imports*, with assistant, and clerks.

1 *Registrar general of trading ships*, and clerks.

LONG ROOM OF THE PORT OF LONDON.

Collector and comptroller.

Bench-officers, clerks, and messengers.

Ships Entries' Office.—Clerk and collector, and under clerks.

Grand Receipt.—Principal clerk and receiver, and under clerks; principal clerk and assistant comptroller, and under clerks.

Plantation and Wine Receipt.—Principal clerk and comptroller, and under clerks; principal clerk comptroller's branch, and under clerks.

Tes Receipt.—A similar establishment.

Outward Department.—Principal clerk and under clerks, receiver and under clerks; principal clerk comptroller's branch, and under clerks.

Coast Department.—Principal clerk and receiver, under clerks; principal clerk comptroller's branch, and under clerk.

Bond Office.—Principal clerk and under clerks.

Examiners' Departments.—Examiner, assistant, and clerks.

Official Agents.

LANDING DEPARTMENTS.

12 Landing surveyors divided into

The Customs Act requires, that before any goods are unladen from any import ship, or bulk broken after arrival within four leagues of the coast, *due report* of such ship and *due entry* of such goods must be made at the Custom-house—3 & 4 Will. IV. c. 52, s. 2; that is to say, the master must produce the *manifest* and *bills of lading* of the cargo, and give and subscribe such *further report* as may be required—ss. 6, 7, 8, & 11; and every ship must come up as quickly as possible to the proper

3 classes. Searchers and landing and coasting waiters, divided into 6 classes:—the 3 first classes each including 20, 4th and 5th 30 each, and the 6th 23.

Baggage Department.—Chief clerk, principal comptroller of landing and warehousing accounts, and 5 comptrollers of accounts.

Jerquer's Department.—Jerquer and 4 clerks.

WAREHOUSING DEPARTMENT.

Clerks for general business, divided into 6 classes:—1st class 18, 2d 17, 3d 35, 4th 40, 5th 45, 6th 47.

Check Office.—Clerk, 5 appointers of weighers, 35 lockers 1st class, 45 do. 2d class, 50 do. 3d class, 53 do. 4th class, total 183; 70 weighers 1st class, 70 do. 2d class, 80 do. 3d class, total 220; 50 messengers, 18 gate-keepers.

Queen's Warehouse.—Warehouse keeper and assistant, clerks and messengers.

Fines Office.—Receiver of fines and forfeitures, and 2 clerks.

Coast-guard Office.—Comptroller general and deputy, principal clerk, and 21 other clerks.

Coast-guard Compensative Fund.—Treasurer, comptroller, committee of 5, and secretary.

Navigation and Sloop Office.—Surveyor for the act of navigation, assistant, and 4 clerks.

Waterside Department (outwards), or river-guard department. Inspector General, 4 inspectors for the river, and 18 tide surveyors, and 10 acting tide surveyors; registrar of tide waiters, 520 tide waiters in 3 classes, 60 watchmen, and 82 watermen in do.

In addition to these, there are the offices of the Registrar of Aliens for the Port of London, and of the customs benevolent fund, and bills of entry for England and Wales.

No person besides the clerks in the *Long Room* can act as agents for transacting business at the Custom-house in London, relative to the entry or clearance of any ship, goods or baggage unless licensed by the commissioners of customs; and a bond with one surety in the sum of £1000 is required in all cases except where the party is a sworn broker of the City of London. A clerk or servant, however, not acting for more than one house of business, need not be licensed, and the agents may appoint clerks to act for them with the assent of the collector or comptroller. 3 & 4 Will. IV. c. 52, ss. 144, 146, and 147.

place of mooring or unlading, without touching at any other place, and must bring to at the station appointed by the commissioners of customs for the boarding of ships by the proper officers, and must not, after arrival, remove without the officers' knowledge—*s.* 13. The point at which the Custom-house officers for the Port of London usually go on board is Gravesend, and the officers afterwards accompany the vessel to her place of discharge (*n*).

- Those docks which are legal quays (*o*), are answerable to government for the whole amount of duty upon goods deposited with them. As soon as a vessel enters the docks, the Custom-house officers who have accompanied her from Gravesend give up possession, and the vessel is placed under the charge of the company; her hatches are locked down and the keys are taken possession of by their officer. When the hatches are opened for the purpose of landing and housing the goods, a *landing-waiter* attends from the Custom-house; and under his superintendence on behalf of the revenue, and some officer on behalf of the company, or rather of the merchant, the goods are landed and placed in the company's warehouses. Invariably, in the landing of goods, the dock company perform all the duty of discharging the cargo (*p*); the goods are landed on the quay; and the landing-waiter on behalf of the revenue, and the check clerk on behalf of the company, take the quantities, whether in weight or measure, or whatever it is, and the goods are put into proper order, and samples drawn: this is all done upon the quay; when they are at once carried into the warehouse, and there remain till required for delivery. The consignee is never allowed to interfere, nor does he usually send a check clerk to superintend the landing (*q*).

(*n*) See *ante*, p. 362; and *Williams v. Marshall*, 6 Taunt. 390; 2 Marsh. 92.

(*o*) See *ante*, p. 361.

(*p*) See *post*, tit. Porters and Carriers.

(*q*) Rep. on Inland Warehousing, 1840, Evidence of Mr. Longland.

It is usual in charter parties to mention the express number of days for unloading a vessel, at the expiration of which demurrage shall begin; the word "days" used alone in a clause of demurrage for unloading, by the usage of the Port of London means *working days* only, and does not comprehend *Sundays* or holidays (*r*). If, instead of fixing the time, the charter party gives the *usual and customary time* to unload, it simply means when the ship gets a birth by rotation, and the cargo can be discharged into the bonded warehouses of the docks or otherwise; for though the cargo might have been landed sooner, by an immediate payment of the duty, yet, since the bonding system has been introduced, this has ceased to be the usual and customary mode of unloading customable goods (*s*).

Most of the Dock Acts (*t*) expressly reserve the claim for freight on goods landed there, but the lien of the master or owner is preserved without any such reservation (*u*), and the lien of the wharfinger or warehouse-keeper, by the usage of the Port of London, attaches upon goods deposited with them for the balance of their general account (*x*).

The *legal quays* are, to all intents and purposes, public quays. "If the king or a subject," says Lord Hale (*y*),

(*r*) *Cochran v. Reibergh*, 3 Esp. Rep. 121.

(*s*) *Rodgers v. Forresters*, 2 Campb. 483; *Burmeister v. Hodgson*, *id.* 488. If, however, a specific time be named in the charterparty at which demurrage should begin, the crowded state of the docks would be no answer to the claim. *Randall v. Lynch*, *id.* 352.

(*t*) London Docks, 9 Geo. IV. c. CXVI.; St. Katharine's Docks, 6 Geo. IV. c. CV. s. 131.

(*u*) *Wilson and others v. Kymer and others*, 1 M. & S. 157.

(*x*) *Naylor v. Mangles and ano-*

ther, 1 Esp. N. P. C. 110; and *Spears v. Hartley*, *id.* vol. 3, p. 81; but this custom does not extend to prejudice the rights of third parties; see *Oppenheim v. Russell*, 3 B. & P. 42; *Rushforth v. Hadfield*, 7 East, 224; *Richardson v. Goss*, 3 B. & P. 119; and, therefore, the goods of a principal cannot be retained for a general balance due from the factor. *Leuckhart v. Cooper and another*, 5 Bingh. M. C. 99; and *Nisi Prius* Rep. 7 Car. & P. 110.

(*y*) De Port. Mar. par. 2, cap. 6; Hargr. Tra. vol. 1, p. 77.

“have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods, as for the purpose, because they are the wharfs only licensed by the queen according to the statute 1 Eliz. c. 11, or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for crannage, wharfage, pesage, &c., neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king’s licence or charter. *For now the wharf and crane are affected with a public interest, and they cease to be juris privati only*; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but it is affected with a public interest.” In compliance with this doctrine, it was held that the public have a right to use the cranes erected on a legal quay in London, which it is sufficient to designate in the pleadings as “a public open and lawful wharf,” without claiming the right by immemorial usage (x).

Under the 13 & 14 Car. II. c. 11 (a), it was decided that wharfingers were not entitled to wharfage for goods unladen into lighters out of barges fastened to their wharfs, though an action on the case, or perhaps other remedies, would lie for the inconvenience to the wharf (b), and when wharfage is not paid, a demand may be made for anchorage and moorage (c).

In a subsequent case before Lord Kenyon, at Guildhall, a custom was proved to allow barges at low-water to moor for one tide at the piles in the front of all wharfs in the Thames; but if there are no piles, the custom does not allow the barges to moor at the wharf, unless through distress (d).

(x) *Bolt v. Stennett*, 8 T. R. S. C. 3 Burr. 1409.
606.

(c) *Syeds v. Hay*, 4 T. R. 260.

(a) Mentioned *ante*, p. 357.

(d) *Wyatt v. Thompson*, 1 Esp.

(b) *Per* Lord Mansfield, *Stephen* N. P. C. 253.

v. Coster, 1 Wm. Bl. 413, 423;

A hoyman, who brings goods from an out-port into the Port of London, is not discharged by landing them at the usual wharf, but is bound to take care and send them by land to the place of consignment(e); and by the custom of the river Thames, if the consignee send a lighter to fetch the goods, the master of the ship is obliged to watch them in the lighter until the lighter is fully laden; and he cannot discharge himself from this obligation by declaring to the lighterman that he has not hands to guard the lighter, unless the consignee consent to release him from it(f). But it has been held, that after the lighter is fully laden, the responsibility of the master is at an end, although the vessel remain alongside(g).

When Turkey ships are under quarantine previous to entering the Port of London, it is usual for the consignee to send persons at his own expense to pack and take care of the goods; and the master is not answerable for the damage to the goods if he omits to do so(h).

When goods come to a *wharf* in London, and no ship is at the wharf bound to the port to which the goods are directed, they are warehoused, and, if *going coastwise*, they are delivered to the crew of the next proper vessel that arrives; and by the usage of the Port of London, it has been held that the responsibility of the wharfinger ceases with respect to such goods by delivery of them to the mate of the vessel upon the wharf, and nothing is charged by the wharfinger for shipping, but only for wharfage(i). The wharfinger has merely to receive the goods and keep them dry; and it is the duty of the ship's com-

(e) *Wardell v. Mourillyan*, 2 Esp. N. P. C. 693.

(f) *Cattley and another v. Winttingham*, Peake, N. P. C. 150.

(g) *Robinson v. Turpin and another*, Gmldhall Sit. after Trinity Term, 1805, *cor.* Lord Ellenborough; and see *Strong v. Natally*,

4 Bos. & P. 16; 1 N. R. 16.

(h) *Dunnage v. Jolliffe*, cited Abb. on Shipping, pt. 4, ch. 4, sixth ed. p. 335.

(i) *Corban and another v. Downe*, 5 Esp. N. P. C. 42; with goods going abroad this is different, *id. ib.*

pany to come and roll them to the ship; and from such time the ship's company are considered to have the charge (*k*).

Vessels cannot be detained in the Thames on account of lien for repairs, &c., without an express agreement for that purpose; for the usage of the shipwrights is to give credit to the owner, varying in terms according to the class of ship; it is generally fifteen months; with respect to East India ships it is eighteen months, but without a previous stipulation for that purpose, neither a ready-money payment nor security is ever required. The shipwright, therefore, has no lien on the vessel, even in his own dock, without an express agreement for that purpose (*l*).

On export ships *clearing outwards*, the master is obliged to obtain from the Custom-house a *victualling bill*, in which the whole of such part of the cargo as consists of stores must be inserted. 3 & 4 Will. IV. c. 52, s. 63. Before any goods are taken on board, the master must also deliver to the collector or controller a certificate from the proper officer of the *clearance inwards* or *coast-wise* of such ship of her last voyage, specifying what goods, if any, have been reported inwards for exportation, and an account, signed by the master or his agent, of the entry outwards of such ship for her intended voyage, setting forth the name and tonnage of the ship, the name of the place to which she belongs, if *British*, or of her country, if foreign, the name of the master, of the place for which she is bound, and of the place at which she is to take in her lading. When this is done, in the form directed by the Custom-house, it constitutes the entry outwards, and is entered in a book in the proper office for the information of all persons interested.—s. 64. On arriving at Gravesend, it is usual for the Queen's searcher

(*k*) *Leigh v. Smith*, 1 Car. & P. 640.

(*l*) *Baill v. Mitchell and another*, 4 Campb. 146.

to go on board and deliver to the master of the vessel certain *cockets* received from London, and a note with dates called a *clearing note*, which is the latest document given to the master of an export ship from the Port of London (*m*).

Since their original establishment, several acts of parliament (*n*) have been passed, extending the powers of the

(*m*) *Williams v. Marshall*, 6 Taunt. 390; 2 Marsh, 92.

(*n*) *Viz.* London Docks: various statutes, all now repealed by the 9 Geo. IV. c. CXVI., which is the act at present in force. West India Docks: ditto by 1 & 2 Will. IV. c. LII. East India Docks: ditto by 9 Geo. IV. c. XCV., and 5 & 6 Will. IV. c. XLIV. St. Katharine's: 10 Geo. IV. c. L., 11 Geo. IV. c. XIII., 2 & 3 Will. IV. c. XLIX., 6 & 7 Will. IV. c. XXXI. Commercial Docks: 51 Geo. III. c. LXV., and 57 Geo. III. c. LXII. Grand Surrey: 51 Geo. III. c. CLXX. East Country: 6 Geo. IV. c. LXIV. The East and West India Dock Companies are united by the 1 Vict. c. IX.; and the powers given by the 1 & 2 Will. IV. c. LII. are extended to both companies, and the property of the East India Dock Company vested in the West India Dock Company.

THE LONDON DOCKS extend from East Smithfield to Shadwell, and contain 32 acres of water, and 11,320 feet of legal frontage. There are two docks used by the company, the Western and Eastern, and a third which is appropriated for the use of the commissioners of customs, for vessels laden with tobacco. The commissioners are directed by the Warehousing Act, mentioned *ante*, p. 361, to provide the warehouses

for warehousing tobacco at the ports into which tobacco may be legally imported, 3 & 4 Will. IV. c. 56, s. 5; and, in pursuance thereof, they arranged with the London Dock Company for this third dock and the warehouses adjoining, which are called the *Queen's Warehouses*. There are three entrances to these docks from the river, *viz.* the *Hermitage*, or upper entrance leading to the Western Dock through the Hermitage Basin, of 40 feet width; the Wapping, or central entrance, communicating with the same dock through the *Wapping* Basin, of the same width; and the Shadwell, or lower entrance, of 45 feet width, communicating with the Eastern Dock through the Eastern Basin. The authority of the dock-master extends through the whole docks, basins, and cuts, including a radius of 200 yards from each of the entrances. 9 Geo. IV. c. CXVI. ss. 26, *et seq.*

THE EAST AND WEST INDIA DOCKS reach from Limehouse to the River Lea, consisting of the East India Import and Export Docks, and basins called the *Eastern Docks*; and the West India Import and Export Docks, which with the Blackwall and Limehouse Basins, the South Dock (formerly the City Canal, but sold to the company under the 10 Geo. IV. c. CXXX.) and timber pond, are all denominated the

different dock companies; and to these the reader must be referred for information on the subject of their various peculiar privileges and liabilities; we can only in this place give a very cursory view of such portions thereof as are common to the four principal docks.

The docks are under the government of dock-masters, who are invested with powers within the docks and a certain distance therefrom (*o*), similar to those of the harbour masters in the river, to direct the mooring, unmooring, moving or removing ships, vessels, lighters and craft coming into or going out of, or lying or being in such docks, and the times and manner of their entrance into, lying in, or going out of the same, and their station and position in the docks, and the times of opening and shutting the gates; and penalties are inflicted by the different dock acts for disobeying the orders of the dock-masters, who are in such cases empowered to moor or unmoor, move or remove any ship or vessel, lighter or craft, at the charge and expense of the master or owner; and any master, commander, mate, pilot or other person

Western Docks. The dock-master's authority extends 200 yards from every entrance, except that into the South Dock, where it is limited to 150 yards. 1 & 2 Will. IV. c. LII. s. 101.

THE ST. KATHARINE'S DOCKS extend from the Tower to *Burr Street* and *Nightingale Lane*, near the *London Docks*, consisting of Western and Eastern Dock, and entrance lock and basin. The dock-master's authority extends to 100 yards from the entrance. 6 Geo. IV. c. CV. s. 100, *et seq.*

THE COMMERCIAL DOCKS, which are chiefly confined to vessels laden with timber, occupy a space of 100 acres, from the entrance opposite the *Limehouse* entrance of the West India Docks to the East Country

Docks, and contains six different docks, or a space of 60 acres covered with water.

THE EAST COUNTRY DOCK is a much smaller establishment lower down the river, and contains only one small basin, and an area round the entrance of 100 yards.

THE GRAND SURREY DOCKS are formed by basins in the Grand Surrey Canal. The dock-master has also the same jurisdiction over the entrance, and a radius of 100 yards round.

(*o*) London Docks, 9 Geo. IV. c. CXVI. ss. 125, *et seq.*; East and West India Docks, 1 & 2 Will. IV. c. LII. ss. 101, *et seq.*; St. Katharine's Docks, 6 Geo. IV. c. CV. s. 97, *et seq.*

obstructing or hindering them therein, are subject to similar penalties (*p*).

No vessel is allowed to lie at any of the *buoys*, or make fast to any of the *dolphins*, *mooring-posts* or *mooring-craft* of the dock companies in the river Thames, except vessels intended to go into, or having within six hours previously come out of dock, except with the special permission of the dock-masters (*q*).

The dock-masters are empowered to order all ships and vessels entering the docks to be dismantled (*r*) in such manner as they think proper and safe, and for the prevention of accident or mischief, and during the time of every ship's delivery, or when discharged of her cargo, to have such quantity of ballast on board, or dead weight in her hold, as they may judge requisite for such ship or vessel : and no ship or vessel must be unladen so far as to render her insecure through the want of weight in her hold, or of such quantity of ballast on board as the dock-masters think fit, unless the master or owner certify that she may safely be unladen without such preliminaries ; and the dock-masters are also empowered to give directions for topping, bracing or striking *yards*, *hawser*s and *tow-lines* and *fasts* to the *dolphins*, *mooring-craft*, *buoys*, *mooring-posts* or *rings*, and also to regulate the *equipment*, *rigging* and *lading* of all ships and vessels in the docks, &c., and also, as soon as any ship or vessel has discharged her cargo, to cause her to be removed from the quays or wharfs into such part of the docks as may be thought proper, and to order out of the docks all light ships or vessels, or lighters, after 24 hours' notice (*s*).

The master of every vessel, or other person in command, is required, within twelve hours after entering the

(*p*) *Vid.* note (*n*), *sup.*

(*q*) London Docks, 9 Geo. IV. c. CXVI. s. 127 ; East and West India Docks, 1 & 2 Will. IV. c. LII. s. 102 ; St. Katharine's, 6 Geo. IV. c. CV.

(*r*) London Docks, 9 Geo. IV. c. CXVI. ss. 129, *et seq.* ; East and West India Docks, 1 & 2 Will. IV. c. LII. s. 104 ; St. Katharine's Docks, 6 Geo. IV. c. CV. s. 99.

(*s*) *Id.* *ib.*

docks, &c., to deliver at the principal dock office true copies of the *manifest* or report of the cargo (*t*).

When the proper entries have been passed at the Custom-house, the cargo is brought to the quay, and landed under the immediate care of the landing waiters (*u*). In case of goods, &c. brought into the docks not being duly entered at the Custom-house, and the landing order lodged with the Custom-house officer within seven days after being reported, or the dispatch of business being obstructed by the neglect or delay of the owners or consignees in passing the proper entries, the goods may be landed and warehoused in the presence of officers of the revenue, and kept as a security for payment of charges (*x*).

As soon as the goods have been weighed or the contents otherwise ascertained, the tares, &c. adjusted, and the marks, numbers, and other particulars entered in the landing waiter's books, they are deposited in one of the

(*t*) London Docks, 9 Geo. IV. c. CXVI. s. 109; East and West India Docks, 1 & 2 Will. IV. c. LII. s. 84; St. Katharine's, 6 Geo. IV. c. CV. s. 126.

(*u*) That is to say, the several packages are weighed or examined, and their contents ascertained, and an account thereof entered in the proper books of the Custom-house, for warehoused goods, or *duty paid*, as the case may be. The landing waiters, in the performance of their duty, are subject to the daily inspection and superintendence of the landing surveyors, one of whom is generally attached to each station.

When the delivery of the cargo is completed, the locker, or some servant of the dock company, signs a receipt for the goods in the landing-waiter's book, which relieves the latter from any further responsibility

respecting them. The landing-waiter's book, containing an account of the warehoused goods, is sent to the warehouse-keeper at the controller's office, when the particulars are entered into a book called a *Register*, and afterwards transcribed into other books there for the inspection of the *jerquer*, whose duty it is to examine into the correctness of the accounts.

(*x*) London Docks, 9 Geo. IV. c. CXVI. ss. 114 and 116; East and West India Docks, 1 & 2 Will. IV. c. LII. ss. 90, 91, 92; St. Katharine's, 11 Geo. IV. c. XIII. s. 13. Under the original London Dock Act it was decided, that those docks having the exclusive privilege of warehousing wines not the produce of the East or West Indies, could not refuse to receive them. *Albatt v. Inglis*, 12 East, 527.

dock warehouses, and placed under the charge of an officer called a locker, who is employed under the warehouse-keeper (y) appointed by the Custom-house.

The person appearing on the Custom-house entries (z) to be entitled to the property is ordinarily registered in the dock books as the owner; but if the goods have been entered by one of the dock companies' officers, under the provisions mentioned before (a), the bills of lading of the vessel and other proofs of ownership must be produced; and if the goods are to be delivered immediately, an order called a *delivery order* is lodged with the proper officer of the docks for that purpose, who, upon the warrant or authority of the Custom-house officer of the duties having been paid (b), at once complies therewith; but if, as is now the usual practice, the goods are *warehoused* in the docks, either a *dock cheque* or *dock warrant* is given to the owner as a recognition of his title to the goods. The former is only used after a transfer of the property in the warehouses, and is a mere certificate of the lodging of the delivery order (c), which we have seen is ordinarily required to constitute a valid transfer of the goods.

The dock warrant is considered, like a bill of lading (d), to pass by mere indorsement and delivery, and to transfer the absolute right to the property described in it. The ordinary form of a dock warrant is thus :—

(y) The warehouse-keeper, in pursuance of the warrants which he receives from the *Long Room* at the Custom-house, issues orders to the locker for every parcel of goods on which the duty has been paid.

(z) Under 3 & 4 Will. IV. c. 53, ss. 18, 19. See *Johnson v. Ward*, 6 Esp. N. P. C. 48.

(a) *Ante*, p. 374.

(b) *Ante*, note (y); *Bentall v. Burn*, 3 B. & C. 423.

(c) See *post*, p. 377. The acceptance of the delivery order, without lodging it at the docks, is not sufficient to bind the vendee under the statute of frauds, 29 Car. II. c. 3, s. 17; *Bentall v. Burn*, 3 B. & C. 423. See *Gosling v. Birnie*, 7 Bingh. 339; *Hawes v. Watson*, 2 B. & C. 541.

(d) *Lickbarrow v. Mason*, 2 T. R. 63; 5 T. R. 367; and 6 T. R. 131.

" East and West India Dock Company.

Ship's Rotation, No. 9.

West India Dock Warehouse, No. 105.

Warrant for 20 Chests of Tea imported in the
ship *Hyder Ali*, from Calcutta. Captain Duncan. Entered by A. B., on
the 31st of December, 1841.

Rent payable from* the 14th day of January, 1842.

[illegible]

Examined and Entered, Cargo Ledger, 10 fol. 343.

Thomas Robson, Clerk.

No. . London, 1st of January, 1842.

Deliver the above mentioned goods to C. D., or assigns, by indorsement hereon.

A. B.

* "This warrant must be presented at the West India Dock, regularly assigned by indorsement, and all charges paid before delivery of the goods can take place."

The description of the goods varies according to the custom of the particular trade. Some it is usual to lot, and they are therefore described in the dock warrants by the numbers of the lots ; other goods are ordinarily sold without lotting, and the warrants are made out for such quantities as are found convenient to the importers ; and weight-notes corresponding to the warrants are furnished, when required, for the use of the holders (e). The war-

(e) By the regulations of the dock companies, dock warrants or checks can be divided, so as to include only certain portions of the goods.

rants are always drawn on paper, having the watermark of the dock company upon them, and in practice are negotiated from hand to hand, or pledged with bankers or others for loans as mercantile securities, representing the value of the goods described in them.

Dock warrants are now recognized as valuable securities (f) by law, and form a very essential part of the commercial machinery of this country. The acceptance of rent by a warehouse-keeper from a purchaser of goods in his possession, was long ago decided to amount to a delivery to the latter (g), and the receiving rent being merely evidence to show on whose account the goods are held, an actual transfer in the warehouse-keeper's books (h), or a change of mark from A to B on the bales of goods in the warehouse (i), would amount to the same thing; but in addition to this, it was also established that by the lodging a *delivery order* with a wharfinger or warehouse-keeper, the latter is bound to hold the goods as the agent of the purchaser; though no application has been made for rehousing, and though no fresh entry has been made in the wharfinger's books (j); and since the establishment of the docks it

(f) See the Factors Act, 6 Geo. IV. c. 94, s. 6, and the Criminal Law Consolidation Act, 7 & 8 Geo. IV. c. 29, s. 51.

(g) *Hurry and another v. Man- gles*, 1 Campb. 452.

(h) *Harman v. Anderson*, 2 Campb. 243; and *Arbouin v. Williams*, 1 R. & M. 72.

(i) Case cited by Lord Ellenborough in *Stoveld v. Hughes*, 14 East, 308; and see *Jones v. Dwyer*, 15 East, 21.

(j) *Harman v. Anderson*, *sup.*; and *Spears v. Travers and another*, 4 Campb. 251. *Semble*, that such an order once lodged could not be countermanded; see *Searle and ano-*

ther v. Keeve, 2 Esp. 598; but until the lodging of the order the goods remain in the vendor's possession, *Knowles v. Horsfall*, 5 B. & Ald. 134; and as long as anything remains to be previously done on the part of the seller, to ascertain the amount of the price, or the specific object of the sale, whether by weighing or otherwise, he may countermand the order for delivery; and the goods are considered as still in *transitu*, and in the vendor's power to stop them until payment. See *Withers v. Lyss*, 4 Campb. 237; Holt, 18, S. C.; *Shepley v. Davis*, 5 Taunt. 617; *Bush v. Davis*, 2 M. & S. 397. If the warehouse-keeper,

has become the constant practice to transfer property once warehoused there, without any notice being given at the dock office; it being now well settled that by the mere handing over the dock warrants duly indorsed, the actual property in the goods becomes divested without any notice to the warehouse-keeper at all (*k*). Goods, therefore, in the docks, which thus pass by the indorsement of the warrants, are not considered to be in the order and disposition of a bankrupt, within the meaning of the bankrupt laws, unless he has the warrants in his possession (*l*); and, in fact, the vendor's possession is considered to be so completely parted with by the transfer of the dock warrants for a valuable consideration, that he cannot afterwards avail himself of the ordinary right of stoppage in *transitu*, or otherwise prevent the goods from being delivered to the purchaser (*m*). On lodging a delivery order at the docks, and producing the dock warrant or check with those received from the Customhouse of the duty being paid, the goods are immediately delivered, or re-exported as the case may be.

Regulations are made by the various Dock Acts for securing the docks from fire or other injury, and penalties inflicted for disobedience (*n*); and goods of a dangerous nature are required to be marked "*combustibles*," and to be removed when required, and no gunpowder or loaded

however, acknowledge the transfer, or make an entry thereof in his books, before the re-weighing, &c., he cannot dispute the purchaser's claim. *Stonard v. Dunkin*, 2 Campb. 344.

(*k*) *Zwinger v. Samuda*, 7 Taunt. 265; and Holt's N. P. C. 58; *Keyser v. Suse*, Gow's N. P. C. 58; *Lucas v. Dorrien*, 7 Taunt. 276; 1 Moore, 29.

(*l*) *Ridout v. Lloyd*, 1 Mont. 103; *Ex parte Davenport*, Mont. & Bligh, 165.

(*m*) *Spear v. Travers*, 4 Campb.

251; *Zwinger v. Samuda*, 7 Taunt. 265; see *ante*, p. 377, note (*j*). Without the delivery of the warrants, or the property being actually transferred into the purchaser's name, goods in the docks cannot, in fact, be transferred at all. Thus the marking casks of wine in the London Docks with the purchaser's initials, in the presence of both parties, is not a sufficient sale within the statute of frauds. 29 Car. II. c. 3, s. 17; *Proctor v. Jones*, 2 Car. & P. 532.

(*n*) London Docks, 9 Geo. IV.

fire-arms can be brought into the docks, or any lighter, &c. receive or deliver more than 25lbs. of gunpowder within 200 yards of the dock entrances; and the use of fire and candles in the docks is under the regulations of the dock officers (*o*).

The dock companies are entitled, under their several acts of parliament, to rates on the shipping and cargoes, tables of which, with the regulations of the docks, are handed to the commanding officer of every vessel on entering the same, and the mode of recovering such rates is specified in the acts of parliament (*p*).

c. CXVI. s. 132; East and West India Docks, 1 & 2 Will. IV. c. LII. ss. 115, *et seq.*; St. Katharine's, 6 Geo. IV. ss. 106, *et seq.*

(*o*) London Docks, 9 Geo. IV. c. CXVI. s. 137; East and West India Docks, 1 & 2 Will. IV. c. LII. ss. 108, *et seq.*; St. Katharine's, 6 Geo. IV. c. CV. ss. 108, *et seq.*

(*p*) *Vis.* London Docks, 9 Geo. IV. c. CXVI. ss. 101, *et seq.*; East and West India Docks, 1 & 2 Will. IV. c. LII. ss. 76, *et seq.*; St. Katharine's, 6 Geo. IV. c. CV. ss. 114, *et seq.* Fourteen days' notice of action is required in proceedings against the dock companies, who are empowered to tender amends before action brought; and such actions or

suits are limited to three calendar months from cause of action, and the companies may plead the general issue; and in all legal proceedings, proof of the property being within the docks, or in an officer's possession, is declared sufficient evidence of the companies' title; and all notices, processes, and proceedings, are required to be sent and served on one of the directors, or the clerk or treasurer, and notices from the company to be signed by the clerk or treasurer. London Docks, 9 Geo. IV. c. CXVI. s. 155, *et seq.*; East and West India Docks, 1 & 2 Will. IV. c. LII. s. 131, *et seq.*; St. Katharine's, 6 Geo. IV. c. CV. ss. 161, *et seq.*

CHAPTER XXII.

THE CIVIC REGULATIONS AS TO TRADE IN LONDON.

THE municipal authorities were, as we have seen (*a*), early invested both by charter and ancient custom with the absolute control and regulation of all trade carried on within the City of London; and many of the ancient civic regulations still remain in force, though from the different manner in which trade and commerce are conducted at this day, they by no means form a very prominent feature in the system.

Under the system of police which prevailed among our Saxon ancestors, all persons were prohibited from residing forty days in a district, for any purpose, without becoming enrolled in frankpledge (*b*); and even when this law had gone into disuse in the rest of the kingdom, it continued to be kept up in various mercantile cities or boroughs; which being free from many of the feudal burthens, were eagerly resorted to as places of settlement.

If a slave fled from his master's soke, and continued unreclaimed for a year and a day, within the walls of a free borough, he thereby effected his enfranchisement (*c*); and hence these boroughs and cities were liable to be continually infested with runaway slaves and malefactors (*d*) of all kinds. And what was then regarded as a still greater evil, not only strangers born in the kingdom, but foreigners, were in the habit of flocking there for the purpose of setting up in trade.

(*a*) *Ante*, p. 49.

(*b*) *Mirror*, ch. 1, sec. 3; *Fabian's Chron. ante*, p. 29.

(*c*) *Mad. Firma Burgi*, p. 271; and as to the City of London in particular, *vid. Lib. de Antiq. Leg.*, in

Town Clerk's Office, and *Stow's Survey*, lib. 5, p. 346.

(*d*) *Art. of Edw. I.* lib. Horn. fol. 272; *Strype's Stow*, lib. 5, p. 314, 365; *Norton's Com.* lib. 2, ch. 2, p. 367.

The latter were therefore expressly forbidden to come to England, but at four fairs, and were not allowed to remain in the kingdom above forty days (e), and as some protection against the speculations of native adventurers, the system of apprenticeship was established, as the legitimate title to the freedom of trading in a city or borough; but a child being supposed to have learned the trade of his father, and a wife that of her husband, became free by that very title: and hence the established principle of law in most boroughs, that no one could become free, except by apprenticeship or patrimony, unless by the express licence of the municipal body (f). All foreign bought and foreign sold goods were declared forfeited (g), and it became part of the oath of every freeman that he would *colour or conceal no foreigner's goods* (h).

As the principles of free trade, however, came to be better understood, great efforts were made by the crown, to encourage foreign commerce by protecting the general merchant from the exclusive privileges of the corporation towns. By Magna Charta of Hen. III. (i) it was declared that all merchants, unless publicly prohibited, should have safe and secure conduct to go out of, or come into England, and to abide or travel therein, and buy or sell by land or water, without any manner of evil tolls; but it was previously expressly provided therein that the liberties and privileges of the City of London should be preserved (k).

In the next reign a sort of compromise was effected with the City of London in this respect, and the mode in which strangers might obtain freedom to trade in the city, was expressly regulated by certain articles agreed to

(e) Mirror, ch. 1, s. 3; Stat. de Civ. Lond. 13 Edw. I. c. 5; Calthorpe's Rep.; Liber Horne, 230.

(f) *Ante*, p. 59.

(g) 8 Co. 125, 128, a; 10 Eliz. 279; 9 Edw. IV. Rot. Parl. No. 30. Sir O. Bridgman's judgment, in

Player v. Hutchins, Harg. MSS. No. 26, p. 37; Mad. Hist. of Exchequer, vol. 1, pp. 208, 209.

(h) *See ante*, p. 62.

(i) 9 Hen. III. c. 30, confirmed by statute 2 Edw. III. c. 9.

(k) *Id. ib.* c. 9.

by the whole commonalty, and presented to and confirmed by the crown.

It was provided (*l*), that no alien should be admitted into the freedom except in the hustings; and no native born, and in particular no English chapman, belonging to any certain mystery or trade, should be so admitted, unless by surety of six honest and sufficient men, of that mystery or trade to which he belonged; but apprentices were to become free, according to ancient usage; all persons being in the liberty of the city, and enjoying its liberties and free customs, and all non-resident freemen carrying on trade within the city, to be in *lot* and *scot*, and share or partake in all burthens for maintaining the corporation, on pain of disfranchisement.

By the Statute of York (*m*), it was declared that all merchants, strangers, and English born, might, without impediment, freely sell their wares in any cities or places, notwithstanding any charters or customs to the contrary: and that whoever gave disturbance to a merchant stranger, should yield to the merchant double damages; and if attainted should have a year's imprisonment, and be ransomed at the king's will. This was confirmed by various other acts of parliament (*n*), and it is laid down as a principle of law, that the privilege of excluding strangers from trading, can only exist by custom, in corporations by prescription; for the crown cannot by charter grant such privilege to a corporation within memory (*o*); much less could a by-law (*p*) establish such a regulation, unless to enforce the previous custom (*q*).

(*l*) Charter, 8th June, 12 Edw. II.

(*m*) 9 Edw. III. c. 1.

(*n*) 2 Rich. II. c. 1; 11 Rich. II. c. 7.

(*o*) 8 Rep. 125, a; *City of London's case*, Cro. Eliz. 803; *The Weavers' Co. v. Brown*, 1 Lutw. 564; *Mayor of Bedford v. Fox*, 1 P.

Wms. 184; *Mitchel v. Reynolds*.

(*p*) 1 Roll. Abr. 364; 1 Lutw. 564; Com. 269; *Harrison v. Goodman*, 1 Burr. 12.

(*q*) 1 P. Wms. 184; *Woolley v. Idle*, 4 Burr. 1951; *Hesketh v. Braddock*, 3 Burr. 1856.

The Municipal Corporation Act (*r*) has now declared void all laws, customs, and privileges of exclusive trading of every corporate town but London: and the whole law upon the subject is consequently now confined to this city.

By charter of 11 Edw. III. granted in parliament, reciting the above Statute of York (*s*), and that it was provided by Magna Charta that the ancient liberties and free customs of the City of London should be preserved, it was declared that the citizens of the said city, their heirs and successors, should have all their liberties and free customs unhurt and whole, as before those times they more freely had the same, the aforesaid statute for the said merchants, made to the hurt of the liberties and customs of the said city notwithstanding.

By another charter of the same king, also granted in parliament (*t*), reciting that the corporation had complained to parliament that every stranger was then at liberty to dwell in the city, and keep a house, and be a broker, and sell and buy merchandizes by retail, contrary to ancient custom and good policy, it was enacted, that no merchant stranger should from thenceforth sell any wares in the City of London or suburbs, any statute or ordinance to the contrary notwithstanding, with an exception, however, in favour of the rights and privileges of the merchants of High Almaine (*u*).

Both these charters, which must be considered in every sense of the word acts of parliament, gave no new rights to the City of London, but were rendered necessary by the previous statutes, which had encroached upon their privileges: and the same course was pursued with

(*r*) 5 & 6 Will. IV. c. 76, s. 90.

(*s*) 9 Edw. III. c. 1; *ante*, p. 382.

(*t*) 4 December, A. R. 50.

(*u*) These were the celebrated

Merchants of the Steelyard, who seem to have settled here for upwards of four centuries before. *Vid.* And. Hist. of Commerce, vol. 1, p. 53.

respect to a similar statute (x) made in the next reign; for its provisions were, in the same session, declared not to extend to the City of London; and in like manner the 7 Hen. IV. c. 9, by which drapers and sellers of cloth, and other merchants, were empowered freely to sell their merchandize in gross, as well to any of the king's subjects, as to the citizens of London, notwithstanding any liberty or franchise granted to the contrary, was in the next parliament partially repealed by an act not printed (y), reciting, that by the ancient privileges of the City of London, no merchant strangers to the liberty of the said city, should deal with one another in any merchandizes, within the liberty of the said city, under forfeiture of the said merchandizes: which franchises and liberties had been revoked by the former statute; it was therefore enacted that the said statutes should be repealed, so far as concerned the City of London, and that from thenceforward no merchant, being a stranger to the liberty of the said city, should sell any merchandizes within the liberty of the said city, to other merchant strangers; nor that such merchant strangers should buy of other merchant strangers any such merchandize, within the liberty of the said city, under pain of forfeiture thereof, saving and reserving to all lords, knights, esquires, and all other the king's liege denizens, power at their will to buy within the liberty of the said city, of any merchant stranger, merchandize in gross to their own use, so that they did not sell them again to any other.

This statute was confirmed by an act of parliament passed in the 20 Hen. VII. (z), and has never been repealed, except as regards officers, soldiers, and sailors who have been in the service of the crown, or in the British fisheries,

(x) 1 Rich. II. c. 1.

128, 254.

(y) Rot. Parl. ap. Glouc. 28th Oct. 9 Hen. IV.; Cotton's Abridgment, p. 466; Records, 466; 4 Inst. 249; *City of London's case*, 8 Co.

(z) Cited by Sir O. Bridgman in *Player v. Hutchins*, Harg. MSS. No. 26.

at certain periods (*a*), and being a declaratory act, admits, of course, of proof of the previous custom.

Several acts of common council have been from time to time made in pursuance of these laws, to regulate the trading of strangers within the city; and by act of common council, 15 April, 1606 (*b*), confirmed by another act of 4 July, 1712, it was enacted that no person whatsoever, not being free of the City of London, should by any colour, way, or means whatsoever, directly or indirectly, by himself or by any other, show, sell, or put to sale any wares or merchandizes whatsoever by retail, within the said city and liberties, or suburbs, under the penalty of £5 for every offence. And further, that no person, not being free of the city, should by any colour, way, or means whatsoever, directly or indirectly, by himself or by any other, keep any shop, or other place whatsoever, inward or outward, for show, sale, or putting to sale of any wares or merchandizes whatsoever by way of retail, or use any art, trade, occupation, mystery, or handicraft whatsoever within the said city or the liberties thereof, under a similar penalty. But these regulations were declared (*c*) not to extend to any person bringing victuals to be sold within the city or liberties, or to prevent the keeping apprentices (*d*) on trial under twenty-one years of age; nor to prohibit any citizen dealing in coarse heavy goods, from employing (*e*) any yearly servant living with him, in the weighing, rummaging, lading, or unlading such merchandize;

(*a*) See 24 Geo. III. ss. 2 and 6; 24 Geo. III. c. 81, s. 19; 56 Geo. III. c. 67; and see Orders of Common Council, 14th August, and 18th October, 1759.

(*b*) Priv. Lond. 160.

(*c*) Act of Common Council, 1605.

(*d*) Act of Common Council, 4th July, 1712.

(*e*) By an Act of Common Council, 3 & 4 Phil. & Ma. Priv. Lond. 167, freemen were prohibited from setting any stranger to work in any manual occupation or handicraft, within the city and liberties, under a penalty of £5. See 8 Hen. VI. c. 11; 5 Eliz. c. 4, s. 10; 4 Geo. IV. c. 29; 7 Geo. III. c. 39, s. 4.

or in any labour not concerning the art, skill, and mystery of the same; or to prevent any citizen from setting to work strangers who are either feltmakers, cap-thickers, carders, spinners, knitters, or brewers; and by a subsequent act of common council (*f*), the court of aldermen, or the lord mayor under particular circumstances, were authorized to grant leave to citizens to employ non-freemen, where a sufficient number of freemen could not be found.

The prohibitory part of the above by-laws is as near as possible in the words of the custom as set forth in *Wagoner's case* (*g*), where the custom as well as the by-law were declared to be valid; and this decision has been recently further confirmed by the Court of King's Bench (*h*).

It will be observed that the evident object of the more recent acts of common council is to prevent persons from setting up as retail dealers, or in those avocations which are supposed to require the more than ordinary surveillance of the civic authorities, without taking out their freedom, and the city do not in practice interfere with the wholesale traders at all (*i*), although there are certainly good grounds for believing that the custom strictly extends to both the wholesale as well as the retail trade (*k*); and a special committee of the common council appointed in the year 1827 to consider the subject, reported, that under the advice of counsel they were of opinion that the privilege of excluding non-freemen from dealing by wholesale or otherwise, with other non-freemen within the city, was a good custom, and ought to be enforced (*l*).

The control of the civic authorities has seldom been

(*f*) 22nd November, 1750.

(*i*) 2 Rep. M. C. p. 120.

(*g*) 8 Co. 125, and Cro. Eliz. 352, 3; and see Bridgman, 140; Cart. 169.

(*k*) *Vide Norton's Exposition of the Privileges of London with respect to wholesale trade.* 8vo. Lond. 1821.

(*h*) *Clark v. Denton*, 1 Barn. & Ad. 92.

(*l*) *Vide printed Report of Committee*, 29th November, 1827.

exerted to exclude strangers from resorting to London for the purposes of wholesale trade; and indeed it appears, that until the reign of Edward VI. the whole foreign trade of the country was carried on by foreigners (m).

Under the system of commerce in existence when the powers of the corporation were more strictly exercised, the principal wholesale transactions were carried on in fairs and markets (n); and the control of the civic authorities was required more to regulate these markets, and the various classes habitually employed therein, either as brokers (o), factors, or agents, or in the manual occupations of carrying, lading, &c., than in placing any restriction on the merchants themselves, the assembling of whom was one of the chief objects of the establishment of the markets.

The corporation of London (says Sir O. Bridgman) (p), "were invested generally with the restraint as well of persons, as places for public buying and selling, and times within which they should sell and buy, and trades with which they should meddle, and trades with which they should not intermeddle, as that a dyer should not be a clothier, nor a butcher a tallow chandler, without the aid and before the statute of Elizabeth. So the carmen, draymen, porters, cobblers, musicians, exchange brokers, retailing brokers, carriers, watermen, and generally all other trades in the city, have had their regulations and

(m) And. Hist. of Comm. Stow's Survey, lib. 5, c. XIX. In the beginning of the reign of Elizabeth there were about 327 merchants in London, ninety-nine only of whom were members of the Mercers' Co. *Id. ib.*

(n) See *post*, 399.

(o) The brokers of London, as we shall see hereafter, have always been, and indeed still are, under the strict

regulation of the corporation. And formerly, much more than at present, all transactions with merchant strangers were negotiated through them. Merchant strangers being prohibited to deal directly with one another, see *ante*, p. 383, and Norton's Expos. of the Privileges of the City of London, as to Non-freemen trading.

(p) Sir O. Bridgman's Judgments; Hargr. MSS. No. 26, p. 48.

restrictions from the common council and court of aldermen; and so, generally, men of all other trades and employments in the city, till they have been allowed to become brotherhoods, and afterwards to obtain charters, with powers to choose governors and officers for regulation of their own mysteries, and subject nevertheless to the mayor and aldermen."

These companies or brotherhoods, in early times, had literally the monopoly of the whole legitimate trade of London. They were open to all candidates (*q*), and were presumed in law, as they formerly were in fact, the freely elected representatives of the different crafts or trades to which they were respectively attached. The body at large of each fraternity periodically met in hall-mote to discuss questions affecting the interest of their particular trade; and deputies, as we have seen, were sent to the general civic council (*r*), to advise on matters affecting the whole body.

It was held to be a good custom in London, for the chief officers of the company having the control over any particular trade, to seize ill and unserviceable goods exposed to sale, and carry them to Guildhall, and impanel a jury to judge of their merits, and, according to their verdict, to restore or destroy them (*s*); and on this principle are the charters of most of the present city companies founded, giving power to make by-laws for the general regulation of their respective trades, and to the chief officers for the due correction and control of the individual members.

In addition to this government of the different trades through the guilds or companies, the civic authorities were also themselves compelled to exercise a more direct jurisdiction over particular avocations in order to enforce the proper collection of their dues or customs, and the general observance of the civic laws relating to

(*q*) *Anst.* p. 79.

(*s*) *Skin.* 55, 56.

(*r*) *Anst.* p. 37.

the assize of bread and ale, and to victuallers in general (t), as also to the weighing, measuring, gauging, and carrying the different kinds of merchandize, which, though at first intended for the *bonâ fide* control and regulation of trade, were afterwards principally retained for the sake of the profits derived therefrom.

The civic regulations of trade at this day may be divided into such as affect the collection of the city dues, and the execution of the offices of metage, portorage, &c. ; those relating to the markets, exchanges, and brokers ; and the laws affecting retail dealers, with the system of apprenticeship, and the customs of the city thereon. The mode in which these latter regulations are practically acted upon at this day will engage our attention as occasion requires in the course of the ensuing pages, and in this place we shall merely speak of the dues claimed by the corporation on merchandize.

The collection of the royal duties or customs mentioned in the last chapter (u), anciently gave rise to great exactions on the part of the officers of the Crown, who insisted on the exclusive right of weighing, measuring and carrying them at the owner's expense, and demanded exorbitant fees for the performance of these and other offices (x); and there is reason to believe that the king also derived an immediate profit from these exactions, either by disposing of the offices at a fixed price, or reserving a part of the proceeds to himself. This system was productive of great oppression and injury to the mercantile classes in London, who being exempt from the ordinary tolls and duties (y), and moreover claiming, through the municipal authorities, to regulate the general conduct of trade within the city (z), might also, with the more reason, complain of such impositions.

(t) *Liber Albus*, fol. 50, b. c. ; 23 Hen. VI., *id.* 44, b. ; 7 Rich. II. c. XI. ; *Rec. Turr.* 9 Rich. II. p. 64 ; *City Repertory*, 27, fol. 298.

(u) *Ante*, p. 353, *et seq.*

(x) *Hale on Customs*, part 3, ch. 9.

(y) *Ante*, p. 67.

(z) *Ante*, p. 387.

The lord mayor, we have seen (*z*), had formerly the power of fixing the prices of articles of general consumption; and in order to secure an authentic return of the quantity for the time in the market, and the payment of the tolls or customs thereon, as well as to prevent fraud in other respects, it was very essential that the weighing and measuring such goods should be entrusted to civic officers.

By the 9th charter of Henry III. (*a*), it was declared, that no merchant, stranger, or other, should buy or sell any wares which ought to be weighed or *troned* (*b*), but by the king's beam (*c*), under forfeiture of the said wares; and it was accorded that the king should have his beam in one, two, three, or four certain places, if occasion be, within the said city; and that all merchandize sold by weight above 25 lbs., should be weighed with the king's weight, paying the customs, &c., under pain of forfeiture.

In the 22 Edw. I., a *tronator*, or weigher of the king's beam, was admitted by the court of aldermen (*d*); and in the next reign (*e*) the right of appointment was granted to the commonalty, and the original grant was confirmed to the city, with many additional privileges, by the statute 22 Hen. VIII. c. 8; as also by a previous statute in the

(*z*) Charter Hen. IV., *ante*, p. 20. The 1st statute for the assize of bread and ale was the 51 Hen. III. st. 1, the provisions of which were afterwards extended by the 2 & 3 Edw. VI. c. 15, 22 & 23 Car. II. c. 19, 8 Anne, c. 18.

(*a*) Dated 26 March, A. R. 52, to be found in Liber Albus, and the *inspeximus* of Charles II.

(*b*) Trone signifies a public scale, *trufina* Lat., *τρύραν* Gr., which was placed in every mercantile town under the care of officers of the Crown for the adjustment of disputes

as to the weight of goods and the amount of duty to be paid on them. See Fleta, lib. 2, c. 12; Barr. on ancient statutes; Mad. Hist. Exch. vol. 1, ch. 18; Hale's Customs, pt. 3, *passim*, and ch. 21. Such a public beam still exists in most of the mercantile towns on the continent, and is the origin of the Scotch *trone* weight.

(*c*) See next page.

(*d*) Strype's Stow, lib. 5, p. 422.

(*e*) 12th art. of 1 Charter of Edw. II.

reign of Rich. II. (*f*), and by the charters of 1 Henry IV., 2 Edw. IV., and 22 Hen. VIII.

There appears, according to Mr. Norton (*g*), to have been anciently, in addition to the king's beam (which was probably of the same nature as that still used at the custom-house in every port), another public place for weighing goods in London, under the name of the common beam; the origin of which is most likely to be attributed to the circumstance we have alluded to before, of all wholesale trading being anciently carried on in public markets (*h*), where the merchants being of a more migratory character than at present, and the principal articles of merchandize being actually produced and delivered over at the time of sale, an authentic public beam was necessary, as a security from fraud; and an act of parliament, passed in 1429, required such a common balance to be kept in every town (*i*). The regulation of weights and measures was one of the ancient duties of the clerk of the market (*k*), and devolved upon the lord mayor in that character (*l*); and when the system of selling by wholesale out of the markets came to be established in London, it appears from the recital of several acts of common council which were passed, that the custom of weighing at the public beam came into disuse (*m*); though it was decided by the Court of King's Bench, that an ordinance enforcing the use of the city beam on the sale of all weighable goods by merchant strangers, was good (*n*).

(*f*) Strype's Stow, lib. 5, p. 422.

(*g*) Norton's Com. p. 488.

(*h*) *Ante*, p. 387.

(*i*) 8 Hen. VI. c. 5.

(*k*) 4 Inst. 273.

(*l*) See *ante*, p. 20; and 11 Hen. VI. c. 8. The well known standard weight called Troy weight, we are told, was, in the time of the Saxons, kept in the court of hustings, and called the hustings weight of London.

Strype's Stow, lib. 5, p. 369, quoting Lib. Abb. de Ramsey, ss. 32 and 127. In the time of Rich. I. the sheriffs of London were entrusted with the office of providing standard weights and measures for the whole kingdom. See Northouck's Hist. of London, p. 36.

(*m*) See these ordinances copied into Strype's Stow, lib. 5, p. 273, *et seq.*

(*n*) *Cuddon v. Provost*, 6 Mod. 123, and *ante*, p. 46. See also *Bar.*

The weigh-house existed until a comparatively recent period, in Eastcheap, and was under the government of a master and other officers, and porters, with carts and horses to fetch the goods for the purpose of being weighed (*o*). It is, however, now abolished, and the regulation of weights and measures exists in London, like other places, only as a part of the general system of police (*p*).

By the 4th charter of Edw. IV. (*g*), that king granted to the mayor and commonalty and their successors the offices or occupations of *packing* all manner of woollen cloths, sheep-skins, calf-skins, goat-skins, vessels of amber, and all other merchandize whatsoever to be packed, tunned, piped, barrellled, or anywise to be inclosed; with the oversight of opening all manner of *customable* merchandizes, arriving at the port of safety, as well by land as by water, within the liberties and franchises of the said city and suburbs, as well of the goods of denizens as of aliens, wheresoever they should be accustomed: and also the office of packing all woollen cloths, sheep-skins, lamb-skins, goat-skins and calf-skins, with picking and poudering of the same; and all amber vessels, and all other merchandizes to be packed, picked, and poudered in London, or the suburbs, or to be carried by land, or to be accustomed, as well concerning the goods of merchants denizens as of aliens: and also the office of portage of all wools, sheep-skins, bales of tin, and other merchandizes whatsoever, which should be carried in London from the river of *Thames*, unto the houses of strangers, and, contrariwise, from the said

nardiston's case, 1 Lev. 14; Priv. Lond. 197; and *Fasakerly v. Baldoc*, 6 Mod. 177.

(*o*) *Strype's Stow*, *ubi sup.*

(*p*) Under the statutes 5 Geo. IV. c. 74, and 5 & 6 Will. IV. c. 63, the due observance of which, within the city, is enforced by the ward-mote or inquest jury; see *ante*, p.

219, note (*o*); all weights and measures used within those limits being stamped by the keeper of Guildhall and his subordinates. See 2 Rep. M. C. p. 118.

(*g*) Dated 20th June, A. R. 18, to be found in *Liber Albus*, and the *insperimus* of Car. II.

houses unto the said water, or of other merchandizes which ought to be carried, being in any house for a time ; and also the office or occupation of garbling of all manner of spices and other merchandizes, coming to the said city at any time, which ought to be garbled, and the office of gauger within the said city : and also the office of wine-drawers, to provide for the carriage of wines brought to the port of the said city, and laid on land, wheresoever it be, and elsewhere to be carried, to have the occupations and offices aforesaid, and every of them, and the dispositions, ordinances, oversights, and corrections of the same ; together with the fees, profits and emoluments to the same offices or occupations, and other the premises, and every of them, due, used and accustomed, to the said mayor and commonalty and citizens of the said city, and to their successors for ever, to be exercised by themselves or by deputy, without any account therefor to the Crown."

This grant was afterwards confirmed by various charters and acts of parliament (*r*) ; and also by the charter of James I., before alluded to (*s*), as confirming the title of the city to the conservancy of the Thames, which expressly states " That the mayor, commonalty, and citizens, time out of mind, had had and exercised the office of *measurer*, and measuring of all coals and grain of whatsoever kind ; and also of all kind of salt, and all kind of apples, pears, plums, and other fruit whatsoever ; and also all kind of roots eatable, of what kind soever, and of onions, and of all other merchandizes, wares, and things whatsoever measurable, and the measuring of every of them, in or unto the port of London, coming, carried, or brought upon the said waters in whatsoever ship, boat, barge or vessel, floating, laden, and being on whatsoever part of

(*r*) Stat. 19 Hen. VII. c. 8 ; c. 16 ; 22 Hen. VIII. c. 8 ; 28 Geo. Charter 20 Hen. VII. Lib. Alb. III. c. 33 ; 37 Geo. III. c. 97, s. fol. 60 b. ; and see Priv. Lond. 19 ; 14 ; 59 Geo. III. c. 54.
stat. 19 Hen. VII. c. 8 ; 5 Hen. VIII. (*s*) *Ante*, p. 322.

the said water of Thames, coming to arrive, abide, be delivered or laid down, from the bridge of the town of Staines, westward to the bridge of London, and from thence to the place called *Yendall*, otherwise *Yenlect*, towards the sea, and East, and in *Medway*."

These various offices were further confirmed by the 2d charter of Charles I. (t), and were repeatedly declared to be legal (u): but, in pursuance of a recent statute (x), the offices of package, scavage, baillage, and alien portage, granted by the 4th charter of Edw. IV., were purchased by the government, without prejudice to any other rights of the corporation. The ancient offices, therefore, which are not comprised in the above description, are still valid; and for the execution of such offices, there are regular servants appointed by the corporation, who are under the immediate control of the municipal body.

An officer called the collector of water-baillage (y), receives the city dues of groundage and water-baillage (z) from all vessels arriving in the port of London with foreign, British, and Irish corn, fruit, potatoes, and eatable roots, British and Irish butter, cheese, cured fish, eggs, and salt (a).

The lord mayor is, as we have seen (b), properly the

(t) Dated 5th September, A. R. 16, set forth in the *insperimus* of Car. II.

(u) As to coal meters, 1 Roll's Abr. 557; as to oyster meters, *Laybourn v. Crisp*, 4 M. & W. 320; as to granage of salt, Dyer, Elis. 352; and the arguments in the case of *Collyer v. Stennet*, C. P. Nov. 1841; *City of London v. Combe*, cor. V. Ch. Bruce, 19th Jan. 1842. The office of garbler was abolished by 6 Anne, c. 16.

(x) 3 & 4 Will. IV. c. 166.

(y) Who is also the clerk in the

cocket office; see *post*, p. 398.

(z) *Ante*, p. 93.

(a) Anciently the Crown claimed a duty on all vessels trafficking along the *Thames*, under the name of *avallagum Thamesis*; Mad. Exch. vol. 1, ch. 18, s. 3; and in times of trouble, when the charters of London were seized upon by the Crown, the profits of all the various city offices were accounted for at the exchequer, notwithstanding the charters confirming them to the citizens. *Id. ib.*

(b) *Ante*, p. 20.

gauger of all wines (*a*), oil, and other gaugeable articles brought into the port of London. The deputy gauger, who in fact now performs the whole duties of the office, is elected by the court of common council, and annually sworn in the Court of Exchequer to render a due account; and a third part of the gross produce of the office is received by the corporation.

The office of gauger has been reserved to the City of London by various acts of parliament (*b*); and by the General Weights and Measures Act (*c*) it is provided, that

(*a*) The Crown was anciently entitled to certain duties called prisage and butlerage on all wines imported into the kingdom; see *Fleta*, lib. 2, cap. 22; and these duties were not legally abolished until the passing of the statute 49 Geo. III. c. 98, ss. 35, 36. The citizens of London were, however, exempt therefrom by virtue of the charter 1 Edw. III.; see *Priv. Lond.* 148; *Calth. Customs of Lond. tit. Prisage of Wines*. The Vintners' Company's charter, dated a few years after the above, required "all wines coming to London, to be discharged and put to land above London Bridge, against the *Vintry*, so that the king's butlers and vintners might there take custom;" see *Herbert's History of the Twelve Livery Companies*, vol. 2, p. 632; for the exemption from prisage did not extend to other than citizens. *Priv. Lond.*, *ubi sup.* The grant of the office of gauger was therefore a great protection to the citizens in the levying of these duties. At a subsequent period it became of still more consequence. The Orphans Act granted to the corporation a duty on all wines imported into London for sale; 5 & 6 Will. III. c. 10, continued by various statutes to the present time,

see *ante*, p. 114; and the duty (now amounting to 4s. 9½d. per tun, or 252 gallons imperial measure,) is collected by one of the aldermen acting by deputy, called the collector of the city toll on wine. See 2 *Rep. M. C.* p. 218.

(*b*) 57 Geo. III. c. LX.; 5 Geo. IV. c. 74, s. 26; and see charter 20 Hen. VII.; *Lib. Alb.* fol. 60 b.; *Priv. Lond.* 19; and *Rep. of H. C. on Gauging in the Port of London*, 7 June, 1814; *Rep. of Solicitor General to ditto*, 5 July, 1814; and speeches of Mr. Com. Serjeant and Mr. Jackson for the corporation. On the formation of the London Docks, the right of the corporation gauger to act there was contested, and is not now enforced, the statute 57 Geo. III. c. LX. having granted compensation for the loss sustained thereby.

(*c*) 5 Geo. IV. c. 74, s. 25. The following are the city gauger's dues—

Wine.

Upon the importation of all wines brought into the port of London, (except Rhenish,) 4d. per tun.

Ditto, ditto on Rhenish wine, per aum, 2d.

all tuns, pipes, tertians, hogsheads, or other vessels of wine, oil, honey, and other gaugeable liquors, imported or brought into the port of the City of London, and landed within the said city, and the liberties thereof, shall be subject and liable to be gauged, as heretofore hath been of right accustomed, by the lord mayor or deputy gauger for the time being, save and except that the contents of all such tuns, &c. shall and may be ascertained by the standard measure for liquids directed by the act.

The city right to the metage of coal imported into the port of London (*d*), has been suspended by the 1 & 2 Will. IV. c. LXXVI. s. 92, and a fixed duty of 13*d*. per ton substituted in order to defray the expenses of the coal market: and the metage is now performed under the superintendence of a committee of the trade, whose regulations will be more conveniently noticed in the account of the coal market (*e*).

The monopoly of the metage of the other articles mentioned in the charter of James I. is still retained by the corporation, and extends from Gravesend to Staines (*f*). Ten *corn meters in trust* are appointed by the court of common council; and under them a body of deputy meters, consisting of about 150, are appointed by the corn and coal and finance committee, and sworn in the lord mayor's court to do justice between buyer and seller; and each of them enters into a bond of £100 for any loss arising from carelessness, miscalculation, or any other cause. There are also appointed two *corn shifters*—one below bridge, and the other above bridge, or at Queenhithe,

Wine, Spirits, &c.

For the gauging of all pipes and hogsheads, 6*d*. each.
Ditto quarter casks, 3*d*. each.

Oils.

s. d.
167 gallons and upwards, leager 1 0
84 ditto to 167 ditto . . butt 0 6

s. d.

67 ditto to 84 ditto . puncheon 0 4
50 ditto to 67 ditto . hogshead 0 3
All casks under 50 . . barrels 0 2
2 Rep. M. C. p. 205.
(*d*) See *ante*, p. 393.
(*e*) *Post*, tit. Coal Market.
(*f*) See *ante*, p. 322.

and a clerk or collector at Brookes's Wharf and the Ware river respectively, to collect the city duties (g): and all of these are under the immediate superintendence of the corn meters' office, composed of the meters in trust, a clerk, and under clerks. The eighteen senior deputy corn meters are called *placed men*. On the arrival of a vessel with corn within the above limits, a statement of the quantity of corn on board is left at the office, and, however small it may be, the meter "warned off" by the placemen is compelled to undertake the metage at once, and on their certificate the custom-house officers announce the quantity shipped or landed (h). This system of corn metage, we shall see, materially influences the London corn market (i), where the meter's certificate operates as an authentic document. Under the corn meters are employed the fellowship porters, whom we shall have occasion to mention in another place (k).

The *Fruit Meters* are four in number, and admitted and sworn by the court of aldermen, on purchase. They appoint deputies who are sworn in the lord mayor's court. Their privilege extends to all fruit, potatoes and roots landed or delivered within the city jurisdiction. Wherever a duty is payable to government, the fruit meters attend in person; in other cases the duty is executed by the deputies, one fruit meter always being in attendance at the office (l).

There are also appointed a salt meter and deputies for all salt sold or landed within the jurisdiction of

(g) The corn meters in trust attend on every Friday at the corn meters' office, in Tower Street, and oftener when necessary, and it appears are legally bound to perform the metage by themselves or deputies; and on this account they are empowered to make regulations respecting the deputy meters, and

to suspend and degrade, but not dismiss them,—the latter being the province of the committee of control over corn and coal. See 2 Rep. M. C. p. 109.

(h) 9 Geo. IV. c. 60, s. 47.

(i) *Post*, tit. Corn Market.

(k) *Post*, tit. Porters.

(l) 2 Rep. M. C. p. 109.

the city (*m*), with a fruit shifter and salt shifter, whose duties will be more immediately noticed hereafter. The deputy oyster meters are 21 in number, consisting of the yeomen of the waterside, the clerk of Billingsgate market and others, with assistants, whose functions will be described when we come to speak of that market.

For the purpose of enabling the corporation to ascertain and collect the amount of the dues payable to them, it is provided by the Customs Act (*o*), that if any firkins of butter, tons of cheese, fish, eggs, salt, fruit, roots eatable, and onions brought coastwise into the port of the City of London, and liable to the said dues, are landed or unshipped at or in the said port, before a proper certificate of the payment of the said duties is obtained, the same thereby become forfeited, and proceedings may be taken to recover the same in any of the superior courts, in the name of the chamberlain. The officer appointed to collect the dues is the *clerk in the cocket office*, whose duty it is to receive from the officers of the customs returns of all vessels arriving in the port of London, with commodities liable to city dues, and to issue a permit or cocket for unlading the same.

(*m*) On which the lord mayor has granage. Dyer, Eliz. 352.
by ancient custom a duty called (*o*) 3 & 4 Will. IV. c. 53, s. 110.

CHAPTER XXIII.

THE PUBLIC MARKETS IN LONDON.

IN the infancy of commerce, all mercantile transactions of any importance were carried on in fairs and markets (*b*), where the principal dealers and producers, being able at stated periods to meet with each other, could more conveniently regulate the prices according to the existing supply and demand, and the consumer at the same time always obtain what he required without the trouble and loss of time of travelling about from place to place.

In this country the great periodical fairs were first occasioned by the resort of people to the *Feast of Dedication*, which the church managed to turn to its own advantage, by establishing at the time a public fair to supply the demands of the great concourse of people assembled, and, of course, taking the profits of the tolls and duties to their own use; and for this reason the great fairs are still held by old custom on the same day with the wake or festival of that Saint to whom the neighbouring church is dedicated; and for the same reason they were kept in the churchyard till restrained by the Statute of Winton (*c*). Thus, Hen. II. granted to the priory of St. Bartholomew the privilege of a fair, to be kept yearly at Bartholomew tide, for three days, *viz.* the eve of the day and the morrow, to which the clothiers

(*b*) Certain kinds of goods were anciently accounted *staple commodities* of the kingdom, as lead, tin, wool, &c. And. Hist. of Commerce, vol. 1, p. 216, 231. And the sale of

these was expressly confined to particular cities and towns having the privilege of a market. *Id. ib.* 315.

(*c*) 13 Edw. I. st. 2, c. 6.

of England and the drapers of London repaired, and had their booths and standings within the churchyard of the priory, closed in with walls and gates, locked every night and watched. And within the same precinct another fair was granted to the citizens, consisting of the standing of cattle, and stands and booths for goods, and pickage and stallage, and tolls and profits appertaining to fairs and markets in the field of West Smithfield. In like manner Edward I. (*d*) granted a fair to the hospital of St. James, Westminster, to be kept on the eve of St. James, the day, the morrow, and four days following; and Henry VI. (*e*) granted to the master, brothers, and chaplain, and sisters of St. Katherine's, the privilege of a fair upon Tower Hill, over against the Abbey of Graces, upon the King's ground, in all places thereof.

After the dissolution of the monasteries in the reign of Henry VIII., these last, with many other rights of the religious houses, fell into abeyance, and do not seem to have been re-granted to any one. The profits of the fair belonging to St. Bartholomew's Hospital were, however, sold to Sir John Rich, A. G., and were enjoyed till 1830 by his descendants, who that year transferred the proprietorship to the chamberlain and town clerk of London in trust for the corporation (*f*).

Besides the great periodical fairs, most ancient cities

(*d*) A. R. 18; Strype's Stow, lib. 6, p. 4.

(*e*) A. R. 20; *id. ib.* lib. 1, p. 67.

(*f*) Report of Markets Committee of Common Council on Bartholomew Fair, 2nd July, 1840. This fair, like most others at the present day, had long been completely perverted from its original purpose; and, instead of being the scene of legitimate trade of any kind, is described in a pamphlet written upwards of a century ago, as "known to everybody to be a

mere carnival—a scene of the utmost disorder and debauchery." Reasons for the punctual Limiting of Bartholomew Fair to Three Days. 8vo. Lond. 1708. And in the above report of the markets committee, it is recommended to gradually abolish it altogether. The fairs in the neighbourhood of the metropolis can now only be viewed with the same feelings, and are accordingly all under strict regulations of police. See stat. 2 & 3 Vict. c. 47, ss. 38, 39.

and towns had, within their own walls, markets for the sale of goods of ordinary consumption, which were held once or oftener in every week (*g*), and the City of London had by ancient custom an open market on every day of the week but Sundays (*h*).

The due regulation of these public fairs and markets formerly occupied the constant care of the legislature, and in this they had not only in view the due and regular supply of food and other provisions for the consumer, but also the preservation of that free and open dealing which is so peculiarly required in the infancy of commerce. The Saxon laws (*i*) forbade anything above the value of twenty pence to be sold out of the precincts of the town; and all bargains were directed to be made in the open market, and in the presence of the *borough reeve*, or some trustworthy person. A similar law is to be found in the code of the Conqueror (*k*); hence the established common law principle existing even at this day, that no property can legally change hands, so as to constitute a binding transfer against third parties, except in market overt (*l*).

It is actionable at common law (*m*) to interfere to prevent persons from resorting to a fair or market to the prejudice of the owners; and by the 9th charter of Hen. III. it was declared, that no merchant or other should meet with any merchant coming by land or by water with their merchandize or victuals to the City of London, until the same

(*g*) Vin. Abr. tit. Market, A 3; 2 Inst. 406.

(*h*) 5 Co. 83 b; Hob. 87; *Day v. Savage*, pl. 114, 119; *Bilford v. Lea*, Mich. 38 Eliz. cited *ib.*; Vin. Abr. tit. Trial, G 2; Cro. Eliz. 454; 3 Co. 78 b; 8 Co. 127 a; 9 Co. 66 b; 2 Brownl. 288; 35 Hen. VI. 29 b; 2 Inst. 713. See *Lyons v. De Pass*, 11 Ad. & E. 326.

(*i*) Leg. Athelst. 10, 12, Wilk. 58; Leg. Edgar. Wilk. 80; LL.

Ethel. c. 12; 2 Inst. 220.

(*k*) LL. Will. Conq. c. 60, 61.

(*l*) The statute 1 & 2 Phil. & Ma. c. 7, assigns as the reason of the decay of trade in cities and towns, persons not selling their goods in fairs and markets, and enacts, that all country people shall sell in some open market. See And. Hist. of Commerce, *sub ana.* 1554.

(*m*) 1 Rol. Abr. 106; 2 Vent. 26, 28.

had been there put up to sale, upon pain of forfeiture and imprisonment. This in fact is but a simple guarantee from the crown to put in force the common law, which, however opposed it may be to our modern notions of political economy, regarded the buying up of any kind of produce coming to market as a very heinous offence. This offence of forestalling comprehended every means taken to enhance the common price of any merchandize, whether by spreading false rumours or buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market; or *engrossing*, that is, buying up all things in large quantities to sell again wholesale. The statute 34 Edw. I. *de forestallariis*, after describing the injurious effects of the above practices, declares that for the first offence the offender should be grievously amerced; for the second condemned to the pillory; for the third imprisoned; and for the fourth offence should abjure the vill (*n*); and various other statutes were made (*o*) on the same subject, which were all repealed by the 12 Geo. III. c. 71; but the offence still continues punishable upon indictment at common law, by fine and imprisonment (*p*).

The crown, as the arbiter of domestic commerce, had always the prerogative of establishing these fairs or markets, and therefore it is laid down, that they can only be set up by virtue of a royal grant, or by long and immemorial usage and prescription, which presupposes such a grant (*q*); and to secure ancient fairs from being encroached upon by others, they had at common law a species of monopoly; for it is laid down, that not even by charter can another fair or market be

(*n*) 43 Ass. 38; 3 Inst. 195.

(*o*) Set forth in *Res v. Waddington*, 1 East, 143.

(*p*) *Id. ib.*

(*q*) 2 Inst. 220; 1 Bl. Com. 274; 1 Bl. R. 580; 3 Burr. 1812; and as

to the Roman law, *vide* Hein. El. Jur. Civ. sec. Ord. Pand. lib. L. tit. 11, de Nund. et Mercat. Jus nundinarum a Senatu aut a Principe impetrandum est. Arodii Decreta, lib. 2, 133.

erected within a given distance, or the third part of twenty miles (*r*); the latter being anciently accounted an ordinary day's journey, not only in our own law (*s*), but in the civil (*t*), from which we probably borrowed it (*u*): and this was established in order, as the authorities say (*x*), that the traveller might divide the day into three parts, and be able to go to the market, dispose of his merchandizes, and return on the same day.

In London it was expressly declared by act of parliament (*y*), that no market shall be granted to any within seven miles in circuit of the city: and consequently no new market can be erected by charter within that distance. Indeed, it has been usual (*z*) to require the formal consent of the corporation under the city seal, before any new market can be erected even by act of parliament; and in a modern instance (*a*), a clause of compensation was inserted in the act, and the rights of the city in other respects expressly reserved.

In order to oblige purchasers to resort to the city for all their purchases, a by-law was once made (*b*), that no citizen should carry goods for sale to any fair or market out of the city for the term of seven years, under the penalty of £100; but this was very shortly after repealed by act of parliament (*c*), reciting that the ordinance operated to the destruction of all other fairs, was productive of great hardship in compelling people to travel to London to procure *chalices, books, vestments, and other church ornaments, and also victuals for the time of Lent, linen cloth,*

(*r*) Fleta, lib. 4, c. 28, s. 13; Hale on F. N. B. 184; 1 Inst. 406; 2 Roll. Abr. 140.

(*s*) 2 Inst. 567.

(*t*) π 2, 11, 1.

(*u*) 3 Bl. C. 218.

(*x*) Fleta, *ubi sup.*; Bracton, lib. 4, t. 1, c. 46, lib. 4, fol. 235 b.

(*y*) Charter of Edw. III. declared by the judges to be an act of parlia-

ment, *in re Islington Market Bill*, 3 Cl. & F. 518.

(*z*) 2 Rep. M. C. p. 178.

(*a*) The Islington Market Act, 5 & 6 Will. IV. c. CXI.

(*b*) *Vid.* Journ. Com. Council, A. D. 1487; Entick's Hist. *eccl.* anno.

(*c*) 3 Hen. VII. c. 9.

woollen cloth, brass, pewter, bedding, osmonde, iron, flax, wax, and other necessities, and the citizens were declared at liberty to go with their goods wherever they pleased, which last privilege the citizens of London had previously enjoyed, with the peculiar advantage of being free from toll (*d*).

Public markets were at a very early period established in London for the sale of every kind of produce, and from these no one could be legally excluded (*e*). Blackwell Hall, for woollen cloth (*f*), was held twice a week; Leadenhall, for wool, after it had been sorted by the wool-staplers (*g*), and twice a week for leather and hides, and afterwards for hardware; Gracechurch Street, for herbs; and numerous others, as Cheapside, East Cheap, Honey Lane, Stocks Market, &c. for fish, flesh, and other provisions (*h*).

The civic authorities, we have seen, formerly exercised the power of appointing the places at which particular goods should be sold; and this circumstance has given rise to the names of many of the present streets and wards (*i*); and this jurisdiction of the municipal government was, with respect to the public market, confirmed by various royal charters.

(*d*) See 1st Charter of Hen. I.; 8th and 9th charters of Hen. III.; and *ante*, p. 67.

(*e*) *Vide Mayor of Northampton v. Ward*, 2 Str. 1238.

(*f*) By an ancient regulation all broad cloth was required to be brought to Blackwell Hall to be searched, that it might appear to be vendible, and the hallage duty paid. *Chamberlain of London's case*, 5 Co. 62; *ante*, p. 46. This market was regulated by several acts of parliament; 4 & 5 Phil. & Ma. c. 5, s. 26; 39 Eliz. c. 20, s. 12; 8 & 9 Will. III. c. 9; 1 Geo. I. st. 2, c. 15; and the factors employed in the

trade are still called *Blackwell Hall Factors*, though the market itself has been abolished, and the site authorized to be pulled down to make room for new courts of law. 55 Geo. III. c. XCIII.

(*g*) The 2nd charter of Edw. IV., which confirmed the custom of tronage to the citizens, directed all wools brought to London, or the staple at Westminster, to be housed at Leadenhall.

(*h*) Harl. MSS. 5900; Sir O. Bridgman's judgments, Hargr. MSS. No. 26.

(*i*) *Ante*, p. 38.

In an old act of common council (*k*), it is stated that, by ancient custom and of right, all sales of merchandizes *by strangers* ought and have used to be in the public markets; and the power of seizing all foreign goods sold elsewhere was continually exercised (*l*), and specially declared to be legal by the Court of Queen's Bench (*m*); and for this purpose the corporation had formerly in their service an officer called a *foreign taker*, whose express duty it was to seize such goods (*n*).

Before the great fire, the principal public markets were kept in Leadenhall Street, Cheapside, and Newgate Street; but they were afterwards removed to more convenient places (*o*). The only ancient markets now existing in the City of London are *Smithfield*, *Leadenhall*, *Newgate*, and *Billingsgate*, which, with *Farringdon*, of modern date, are always denominated the *City Markets*, as they are under the control of the corporation; the Exchanges or markets, for the convenience of the corn, coal, and other trades not being reckoned among them (*p*). The city markets are managed by the city lands and markets committees of the court of common council (*q*), and the officers appointed by each market; and, with the exception of *Billingsgate*, are all practically under the charge of the city comptroller (*r*), to whom the different collectors account for the profits of the markets.

The officers of Smithfield Market are, a principal ma-

(*k*) Jac. I. 1612; and other ordinances in 7 Car. I., 19 Car. I., &c. See *ante*, p. 381.

(*l*) Liber Albus, fol. 59 b.

(*m*) *Toms v. Foster*, Cro. Eliz. 352.

(*n*) See Priv. Lond. 136.

(*o*) Strype's Stow, lib. 5, p. 398.

(*p*) There are also various markets in other parts of London quite independent of the civic authorities, viz. Covent Garden Market, under statute 53 Geo. III. c. LXXI., and

9 Geo. IV. c. CXIII.; Hungerford, under 41 Geo. III. c. LXXXVIII., and 6 & 7 Will. IV. c. LXVIII.; Southwark, under 4 & 5 Will. IV. c. XLV., and 7 Will. IV. c. CXIV.; Islington, by 5 & 6 Will. IV. c. CXI.; and the Borough Skin Market, by 48 Geo. III. c. LXXI.; besides Portman, Fitzroy, Newport, and Clare Markets.

(*q*) See 2 Rep. M. C. pp. 73, 178.

(*r*) See *ante*, p. 124.

nager and collector, and an assistant, who are bound to see to the proper conduct of the drovers and salesmen, and collect the city tolls and dues(*s*).

The drovers employed in the market and within the cities and liberties of London and Westminster, are annually licensed(*t*) by the corporation on a written requisition containing the name and place of abode of the applicant, accompanied with a certificate of good character and ability. The licence contains the drover's name and place of abode, age, and description, and number. The drovers have also metal tickets marked with the city arms, and the date of their licence in raised brass figures, which they are required to wear conspicuously on the upper and outer part of the left arm; and a registry is kept of all such drovers, which is open to any one without fee or reward. All sticks and instruments used by the drovers are also required to be stamped by the clerk of the market, and an abstract of all other rules in force for their good government(*u*) is delivered to them, and various penalties are annexed to disobedience thereto.

Every drove of cattle exceeding ten, must have a

(*s*) *Vis.*

Dues.

Sheep, calf, and pig pens (permanent), 1*s.* each, and hurdle pens, 10*d.* each; tyes of beasts, 1*d.* each; tyes of calves, 1*d.* each; tyes of horses, 2*d.* each; hay duty, 6*d.* per load, unless the property of freemen, &c., and 1*d.* each entry of sale; straw duty, 1*d.* each entry of sale.

Tolls.

Sheep sold belonging to non-freemen, 2*d.* per score; beasts sold belonging to non-freemen, 20*d.* per score; horses, 4*d.* each for entry of sale; pigs, 4*d.* per score.

(*t*) Under statute, 21 Geo. III. c. 67, *post*, note (*u*).

(*u*) Any cattle drover in London or Westminster, or within the bills of mortality, by negligence or ill-usage being the means of any mischief being done, or otherwise misbehaving, is subject to a penalty of not exceeding 20*s.*, and may be seized by a constable, and brought before a justice, 21 Geo. III. c. 67, s. 1; and the same penalty is inflicted on persons not so employed, pelting or hurting cattle, s. 2; and the court of aldermen are empowered to make other rules and regulations for the conduct of drovers, s. 4; a copy of which with an abstract of the act is required to be fixed up in the market, s. 8.

licensed drover, and no dogs are allowed under a penalty of 20s. (x).

Leadenhall is an ancient market for the sale of butcher's meat, poultry (y), fish, vegetables, leather and hides. The former being sold every day in the week except Sundays, and the leather and hide markets being held respectively on Tuesdays and Fridays. The officers attached to it are two clerks or collectors (z) and a constable.

(x) Appendix to Rep. of Committee of Common Council on Collector of Smithfield Market, 21st June, 1841. Order of Court of Aldermen, 7th November, 1792.

(y) Under two Acts of Common Council, dated respectively 26th October, 1763, and 22nd October, 1820, all persons carrying on the retail trade of a poulterer within the City of London, that is to say, drawing and trussing poultry, are compelled to be freemen of the Company of Poulterers under a penalty of £5 for every offence; but any person being free of the city in any other company can act as a salesman, factor or agent, only in the vend or sale of any poultry wares by wholesale, in any of the public markets of the city or liberties, and any freeman of the city may sell poultry, either by wholesale or retail, the same not being drawn, trussed, prepared, or made fit and ready for dressing, but not otherwise use or exercise the art or mystery of a poulterer.

In 1630, a citizen and butcher, exercising also the trade of a poulterer, though not free of the company, was committed to Newgate by the court of aldermen for not obeying a by-law of the Poulterers' Company, and otherwise misbehaving

himself. At present, if the trade of a butcher, or any other trade, is united to that of a poulterer, (as defined by the charters and the usages of the city,) the individual is obliged to become free of the Poulterers' Company as well as his own. 2 Rep. M. C. part 2, p. 177.

(z) The amount of the city dues in this market are as follows: viz.

| <i>Tolls.</i> | <i>s.</i> | <i>d.</i> |
|------------------------------|-----------|-----------|
| For every basket, if pitched | | |
| under cover | 0 | 1½ |
| — not under cover | 0 | 1 |

Wholesale Meat Market.

| | | |
|-----------------------------|---|----|
| For a pack of meat above 40 | | |
| stone | 0 | 6 |
| Ditto, under ditto | 0 | 3 |
| Score of sheep or lambs . . | 1 | 0 |
| Calf | 0 | 2 |
| Quarter of beef | 0 | 1½ |
| Hamper of meat | 0 | 1½ |
| Tray of beef | 0 | 1 |
| Fig | 0 | 1 |

Country Dealers, for Toll and Use of Hanging Rail.

| | | |
|------------------------------|---|----|
| Fig | 0 | 3 |
| Basket of offal, &c. | 0 | 1½ |

Shops, &c.

The rents are regulated according to the size.

Newgate Market has attached to it a clerk or collector (a) and constable.

Honey Lane and Fleet Markets have been respectively abolished by various modern acts of parliament (b); and in the room of the latter the present Farringdon Market has been erected, and is managed by a principal and second clerk and constable chosen by the corporation (c).

Billingsgate.—By the statute 10 & 11 Will. III. c. 24,

| (a) The tolls in this market are : | | s. | d. |
|-------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| For every bushel of fruit . . . | 0 | 0½ | |
| For every maund (about 2 bushels) . . . | 0 | 1 | |
| For every sieve . . . | 0 | 0½ | |
| For every man's load . . . | 0 | 1 | |
| For every cart drawn by 1 horse . . . | 0 | 4 | |
| For every cart drawn by 2 horses . . . | 0 | 6 | |
| For every waggon . . . | 1 | 0 | |
| For every sack of potatoes . . . | 0 | 3 | |
| For every hamper of meat . . . | 0 | 1 | |
| For every bundle of ditto . . . | 0 | 2 | |
| For every pack of ditto . . . | 0 | 6 | |
| For every hamper or coop of poultry . . . | 0 | 1 | |
| For every flat of butter, eggs and poultry . . . | 0 | 1 | |
| (b) <i>Vis. Honey Lane</i> , by 4 & 5 Will. IV. c. XXXV.; and <i>Fleet Market</i> , by 5 Geo. IV. c. CLI., and 11 Geo. IV. c. LXIV. | | | |
| (c) The tolls in this market are : | | | |
| <i>For Yearly Standings.</i> | | | |
| For every waggon or cart stand and pitching stand, a rent after the rate of 9d. per square foot per annum. | | | |
| <i>Casual Standings.</i> | | | |
| For every waggon or contents of a waggon (except potatoes) to be pitched . . . | 1 | 0 | |
| For every cart or contents of a cart (except potatoes) to be pitched . . . | 0 | 9 | |
| For every waggon or cart stand, with or without pitching stand adjoining, if by the day . . . | 1 | 0 | |
| For every pitching stand, without a waggon stand, if by the day . . . | 0 | 6 | |
| Potatoes, 2d. per sack, and at the rate of 1s. per ton for any greater or less quantity. | | | |
| Vegetables or fruit in sacks, per sack . . . | 0 | 1 | |
| Ditto, in baskets, containing more than a sieve, per basket . . . | 0 | 1 | |
| Ditto, containing a sieve or less . . . | 0 | 0½ | |
| Oranges, per chest . . . | 0 | 4 | |
| Ditto, per box . . . | 0 | 2 | |
| Pitching stands under the roof of the building, if let to tenants of opposite shops, per week . . . | 2 | 0 | |
| Ditto, if let to any other than such tenants, per week . . . | 5 | 0 | |
| For the use of the scales, per draught . . . | 0 | 0½ | |
| <i>Shops.</i> | | | |
| The rents are regulated according to size, &c. | | | |

ss. 1 and 2, Billingsgate was declared to be a free market on every day but Sunday for all sorts of fish, and for any person to deal therein (*d*), and is open from 5 o'clock in the morning all the year round; and fish brought to Billingsgate may be sold any where else, subject, however, to the general laws and regulations of the city: one of which is, that none but fishmongers shall sell in public or fixed shops or houses (*e*).

By statute 33 Geo. II. c. 27, s. 2, the time of the arrival of every fishing vessel at the *Nore*, must, within three days therefrom, be reported and entered with the *clerk* of the *coast* office in London under a penalty of £50, and at the same time a particular account must be left at the office of the several sorts of fish brought alive to the *Nore* in such vessel (*f*) under a penalty of £20; and if after such arrival the person in command wilfully

(*d*) The ancient fish markets in London were Old Fish Street, Bridge Street, afterwards called New Fish Street, and the Stocks Market near the Mansion House. Herbert's Hist. of the Twelve Livery Companies, lib. 2, p. 17.

(*e*) 10 & 11 Will. III. c. 24; and see 2 Geo. III. c. 27, and 36 Geo. III. c. 118. The companies connected with the fishing trade we have had occasion to mention before, p. 326, note (*A*). The only one of them now remaining is that of the fishmongers, in whom are merged the ancient stock-fishmongers and salt-fishmongers. This company received various charters of incorporation from the 1st year of Edw. VI. to the 55th Geo. III.; and their government consists of 6 wardens and 28 assistants, who are empowered to make and ordain reasonable laws, statutes, ordinances, decrees, and constitutions for the good rule and govern-

ment of the company, and of all persons within London and Southwark and the suburbs, using and employing the *said* mystery, and their servants, apprentices, and merchandises; and the court are invested with the full and entire management, government, and examination of all and every person, denizens and strangers, selling salt or fresh fish of any kind, with full powers of entry into and upon all houses or places where the same shall be dried or stored, whether in cask, or without cask; and if the same be found unwholesome or corrupt, or unfit to be sold, then to take and seize the same, and dispose thereof according to law; and very full and minute directions for the exercise of these powers are contained in the by-laws of the company made 13th September, 1618.

(*f*) Sect. 4.

destroy or throw away any of such fish, not being unwholesome or unmarketable, he is liable to be committed to the House of Correction, and kept to hard labour for any time not exceeding two months nor less than one.—s. 4.

The clerk of the coast office is required to receive and make the entry of such reports of arrivals and account of fish in proper books for that purpose, and make returns thereof to the lord mayor on every Monday, Wednesday and Friday (*g*).—ss. 6, 7.

No fish, after its arrival at the Nore, must be removed out of the vessel in which it was brought into the Nore, or well-boat of any other vessel, under a penalty of £20; nor may any fish be delivered out of such fishing vessels, unless by retail, into other vessels, but such as shall be employed to carry the fish directly to market (*h*): and if such market vessels loiter on their way, or are above one tide, after taking in their loading, in arriving at the markets and delivering their fish there, the offender is liable to be committed to hard labour for any time not exceeding two months, nor less than one—s. 8; and the present practice is for the fishing smacks that catch the fish to come to Gravesend and lie there while their cargo is shipped into hatch boats and brought to market (*i*).

(*g*) Vessels arriving in London after the legal hours of business, laden with fish, may discharge their cargoes forthwith, upon their coast documents being deposited in the tide surveyor's office, where an officer of that class is in constant attendance. C. M. 7th November, 1833.

(*h*) *Viz.* any legal market in London or Westminster. 4 & 5 Will. IV. c. 20. By the 22 Geo. II. c. 49, a very long and particular statute power was given to appoint another fish market at Westminster; and this

power was continued by various subsequent statutes, and was ultimately carried into effect by statutes 11 Geo. IV. & 1 Will. IV. c. LXX., and 6 & 7 Geo. IV. c. LXVIII., establishing the present Hungerford Market. The uptown markets are not of course included in the above provision.

(*i*) Evidence of yeoman of water-side, and clerk of Billingsgate, before Committee of the House of Commons on Channel Fisheries, 1833, p. 95.

The salesmen sell the fish by commission for the fishermen (*k*). They are not allowed to buy fresh fish to be sold again in which they are any way interested; and no fresh fish can be sold at the first hand at the market, or within 150 yards thereof, during market hours, before a particular account of the then supply in the market be placed over the stall or place of sale—33 Geo. II. c. 27, ss. 10 and 12; and the under water-bailiff and yeomen of the waterside are invested with power to seize all spawn, fry or brood of fish, unsizeable or unseasonable fish, or smelts under five inches long, and carry the offender before a justice—ss. 13 and 14.

The whole control over Billingsgate Market, and the fixing the hours at which the same shall begin, belongs to the court of common council, who are empowered from time to time to appoint the hour for the commencement of the sale of fish by wholesale or retail therein, or within 150 yards of the dock (*l*).

(*k*) *Id. ib.* p. 96.

(*l*) 36 Geo. III. c. 118. The officers attached to Billingsgate Market are the clerk of the market and assistant, (the former being also one of the yeomen of the waterside,) and the oyster meters and servants mentioned before, p. 398.

The *market dues* at Billingsgate are as follows:—

Wholesale stands, 54 feet superficial, each, including the use of a table and a gas light, 9*s.* per week.

Retail stands, from 3*s.* to 5*s.* per week.

Casual stands, 6*d.* per day.

Sheds for muscle and other shell fish, 1*s.* per day.

Long or sea boats, oyster boats, and muscle boats, 1*s.* each.

Small boats (including plank), 1*s.* 7*d.* each.

Vessel with salt fish or fruit, 2*s.* 8*d.* for first day, and 1*s.* 8*d.* every other day, including 1*s.* for plank.

Long boats, salt and fruit vessels, for plank, 1*s.* each.

Wherries with salt or other fish, 1*s.* each.

Peter boats, having saltwater fish or fresh salmon, 6*d.* each.

Ditto, having freshwater fish, 2*d.* each.

Small or river boat with fish of foreigners, charged the same as long or sea boats.

Oyster metage, $\frac{1}{4}$ *d.* per bushel.

Fish carriage with open bulk, 1*s.* each.

Pads and pots of fish, $\frac{1}{4}$ *d.* each.

Dock Dues.

Oyster boats for groundage (3 days), 6*d.* per boat.

The statute 42 Geo. III. c. 88, s. 2, directs that all fish brought to the market shall be openly and publicly sold at first hand, and sold in no greater quantity in any one lot or parcel than therein directed and prescribed; and that each lot or parcel shall be composed of one sort of fish, and not of two or more different sorts therein named.

The practice, however, now adopted in the market is to sell fish to the highest bidder, but not always in the precise quantities limited in the act of parliament, the provisions of which, in this respect, have been recommended to be repealed (*m*).

No oysters can be sold unless an oyster meter, or his deputy (*n*), be on board the boat from which they are landed; and these meters and their servants perform the duty of shovelling, unloading, and delivering the oysters. Persons under them, called *holdsmen*, actually shovel the oysters into the measure, place it on the deck, and then pour its contents into the buyer's basket (*o*). The meters are divided into morning and day meters. The former were established to enable the boats to deliver in time for the morning coaches before the market (*p*); and when the market bell rings, the day meters succeed them. In pursuance of a report (*q*) of a committee of the

Ditto, for use of ladder, &c., 3*d*. per boat.

Long or sea, and small or river boats, (except oyster boats,) 2*d*. each.

(*m*) Rep. of Committee of Common Council, of 27th February, 1840.

(*n*) See *ante*, p. 298.

(*o*) See *Laybourn v. Crisp*, 4 M. & W. 320, in which this practice was held valid. Both the meters and holdsmen are compelled to be members of the company of fellowship porters, and will be mentioned again

under that head.

(*p*) An additional charge of 4*s*. a boat is made on all that open before the market bell, which is now done by almost all. The day meters board the boats at 8 A.M. and remain on board till noon; and again from 2 P.M. till dark, and measure and assist in the delivery. Between 12 and 2 no oysters can be sold from the boats. 2 Rep. M. C. p. 176.

(*q*) 27th February, 1840, in consequence of the decision in the case of *Laybourn v. Crisp*, *supra*.

court of common council, the deputy oyster meters, by themselves or servants, are now compelled to perform the whole metage duty without any extra charge by the holdsmen, and certified accounts are delivered by the deputy oyster meters of the quantity of oysters measured.

CHAPTER XXIV.

THE ROYAL EXCHANGE, AND REGULATIONS AS TO
BROKERS, &c.

THE discontinuance of the practice of wholesale dealing in the public markets, and the gradual substitution of the system of commerce at present in use, occasioned in most countries the appointment of some fixed place where the merchants, bankers, and others engaged in extensive money transactions, might daily assemble, and, as in the ancient periodical fairs (*a*), avail themselves of the information obtained from each other as a guide in the purchase and disposal of their stock, and in fixing the price of labour, rate of interest of money, and the course of exchange between different foreign countries. These places of meeting, called *bourses*, or exchanges, have existed in most mercantile towns from an early period, as at Bruges, Antwerp, &c. (*b*), and the commercial towns of France (*c*); and similar establishments, we are given to understand, existed also among the ancients (*d*).

The merchants of London anciently fixed their place of meeting in Lombard Street, so called after the Lombard money dealers, who resided there, and regularly assem-

(*a*) *Ante*, p. 399.

(*b*) *And. Hist. of Commerce*, vol. 1, p. 360.

(*c*) *Terrien's Com.* liv. 2, ch. 10, fol. Rouen, 1654.

(*d*) Under the name of *byrsa* or *fora argentaria*. The original *byrsa*, according to Virgil, was established in the citadel of Carthage, and called after the fabulous story of the foundation of the city by Dido, on ground ingeniously obtained by her for the price only of so much as could be

covered by a *byrsa*, or bull's hide, which being cut into thongs served to measure out an ample site for the intended city.

"*Mercatique solum facti de nomine byrsam,*"

says the poet, 1 *Æn.* 367.

The modern word *bourse*, however, is said to be derived from a wealthy family of that name who are recorded to have founded the Exchange at Bruges. See *And. Hist. of Com. ubi sup.*

bled in a place called the Pawn House, we are told, with other foreigners, merchants and others, twice every day, as far back as the time of Edw. II. (e); but in the year 1546, by the exertions of Sir Thomas Gresham, who was the Queen's exchanger or moneyer (f), and had taken a conspicuous part in the control of the foreign exchanges at that momentous period, the establishment subsequently known by the name of the *Royal Exchange* was called into existence, and has ever since his time continued under the management of a committee, called the *Gresham committee*, consisting of the lord mayor, three aldermen and eight commoners, nominated by the court of common council, on the part of the corporation of London; and of the master, three wardens, and eight senior members of the Mercers' Company, who, by the will of the founder, are also jointly interested therein (g).

The Gresham committee have the whole management of the establishment, and the power of fixing the hours of meeting. The hours at which the Royal Exchange (h) is at present open are from 10 till 5 (i), the principal if not the only important business there being transacted during the last hour. The regular attendance on 'Change is not now looked upon as of that essential importance which it formerly was (k), further and more impor-

(e) Maitland's Hist. of London, vol. 2, p. 998; and Malynes's Lex Mercat. tit. Assurance.

(f) *Id. ib.*, and And. Hist. of Commerce, p. 460. See *post*, p. 432.

(g) Maitland's Hist. of London, *ubi sup.* The Code de Commerce places the public bourses under the management of the government, liv. 1, tit. 5.

(h) The present temporary Exchange is at the Excise Office, during the rebuilding of the edifice now being erected under the provisions of the statute 1 & 2 Vict. c. C.

(i) Acts of Com. Council, 27

Aug. 1630, 24 March, 1669. Until a comparatively recent period, there were meetings on the Exchange every day, morning and evening, as formerly was the case in Lombard Street, *supra*.

(k) *Cedere foro*, among the Romans, signified to become bankrupt, Juv. Sat. XI. 50; and with us a merchant purposely absenting himself from the Royal Exchange to avoid meeting his creditors would, it seems, be construed into an act of bankruptcy. See *Gillingham v. Laing*, 6 Taunt. 532.

tant alterations having taken place in the system, by which still greater facilities are afforded for the settlement of mercantile transactions, without the previous necessity of meeting in public, and the various departments of trade being at this day, much more than formerly, confined to particular classes who have exchanges or markets of their own, where their principal business is conducted (*l*).

Connected with the Exchange are a class of mercantile agents, called Brokers, from the Saxon word *broc*, misfortune, and literally meaning *traders broken*, none but such being formerly admitted to that employment (*m*). Their business is to make bargains between merchant and merchant, for commission (*n*). Brokers connected with the public bourses are established in the principal commercial towns on the Continent, under municipal regulations, calculated to obtain punctuality and fidelity in their dealings (*o*); and with respect to the City of London, it was enacted, as far back as the time of Edward I. (*p*), that there should be no brokers but those received and sworn by the lord mayor and aldermen (*q*); and by act of common council, 20th Edw. III., confirmed by the 5th charter of that king, and also by stat. 1 Jac. I. cap. 21, brokers in London were directed to be chosen by merchants of the mysteries in which they act, and presented by six persons of such mysteries in order to be sworn by the court of aldermen (*r*).

(*l*) See *post*, Chaps. XXV. *et seq.*

(*m*) Tomlins' Law Dictionary, tit. Brokers.

(*n*) *Per* Tindal, C. J., in *Pott v. Turner*, 6 Bingh. 706; and see Jacob's Law Dict. tit. Broker.

(*o*) *Per* Abbott, C. J., in *Goom v. Affalo*, 6 B. & C. 122; Code de Com. liv. 1, tit. 6; and see Malyne's Ancient Law Merchant, ch. 39; as also in commercial cities among the ancients, under the name of Proxe-

netæ Officinæ, lib. 30, x. tit. 14; De Prox. Ulp. lib. 8, de Omn. Tribun.; and under the Scottish laws, brokers were directed to be chosen by the commonalty of the gild, stat. Gildæ Scot. cap. 27.

(*p*) Stat. de Civ. Lond. 13 Edw. I. c. 5.

(*q*) Lib. Dunthorne, fol. 237, and Lib. Alb. 38 a; 12 Hen. III. fol. 57 b; 3 Edw. III.

(*r*) *Id. ib.*; Sir O. Bridgman's

The above charter also declares that no stranger should thenceforth be a broker within the city or suburbs, and brokers are consequently always obliged to take up their freedom before admission ; and an act of common council, 9th Hen. V., also declares that no alien shall be admitted.

There are several other old acts of common council for the regulation of brokers in London, but these have nearly all been incorporated with other provisions in the statutes 8 & 9 Will. III. c. 32, 6 Ann. c. 16, and 57 Geo. III. c. LX., by which it is declared, that all persons who shall act as brokers within the City of London or liberties thereof, shall from time to time be admitted (s) so to do by the court of mayor and aldermen, under such restrictions and limitations (t) for their honest and good behaviour as the court shall think fit, and subject to the annual payment of £5, (which is denominated the *brokers' rent*,) and the like sum on being admitted.

The exact class of persons coming within the above description of brokers is not very accurately ascertained (u) ; stock and bill, and exchange brokers (x), in London have been decided to be within it, as well as merchants' brokers ; but ship agents, or ship

judgment in *Player v. Hutchins*, Hargrave's MSS. 56, p. 29.

(e) A broker cannot maintain an action for work and labour, and commission for buying and selling, unless duly licensed under these statutes. See *Cope v. Rowlands*, 2 M. & W. 149. If a person, however, should wish to become a broker, and his application to the court of aldermen were rejected, or unreasonable conditions were imposed upon him, it seems the Court of Queen's Bench would grant a *mandamus* in his favour. See observations of Little-
dale, J., in *Clark v. Powell*, 1 Nev.

& M. 505.

(f) If the court of aldermen were to make improper regulations, it seems they could be reversed by the Court of Queen's Bench. Parke, J., in same case.

(u) Smith's Mercantile Law, p. 45.

(x) *Bosworth v. Machado*, cor. Lee, Ch. J., Lond. sittings after Trin. Term, 1745 ; *Jansen v. Green*, 4 Burr. 2103 ; *East*, 292 ; *Clark v. Powell*, 1 Nev. & M. 492 ; 4 B. & Ad. 846 ; and *Cope v. Rowlands*, 2 M. & W. 152.

brokers (*y*), or auctioneers (*z*), or appraisers, are not so.

By the regulations of the court of aldermen made in pursuance of these statutes (*a*), it is provided—

1. That every person applying to be admitted a broker, shall produce and show to the satisfaction of the court, a certificate of his having competent skill and knowledge in the particular trade or business wherein he seeks to be admitted and act as a broker, which certificate shall also recite the nature of his former servitude, or otherwise the line of business he has been brought up in, and has lately used; such certificate to be signed by respectable merchants and others, not fewer than six in number at the least, using or carrying on trade or merchandize.

2. That every person so applying to be admitted into the office and employment of a broker shall, in his petition to the court for such admission, set forth the line of business which he intends as such broker to pursue, and shall establish to the satisfaction of the court that he is conversant with such line of business, and in the articles he intends to intermeddle with as such broker.

3. That no certificate or recommendation of any person to be admitted a broker be signed by an alderman of the city.

4. That the court will, from time to time, limit the admission of brokers to such competent and sufficient number as the court in their discretion deem meet and necessary.

5. That the order of the 23d day of June, 1708, *viz.* “That no person shall be licensed to exercise the employment of a broker who shall drive any other trade,

(*y*) *Gibbons v. Rule*, 4 Bingh. 301.

(*z*) *Wilkes v. Ellis*, 2 H. Bl. 555; and brokers, therefore, who conduct

sales by auction at the public sale rooms, are generally licensed in both characters.

(*a*) 15 September, 1808.

and that all persons who have been already admitted brokers, and do use or exercise any trade or calling, shall forthwith leave off and relinquish such trade or calling, or otherwise the court will discharge him or them from the said office and employment of a broker," be for the future strictly enforced.

6. That no broker shall make out or take any bill of parcels in his own name (*b*), or receive or take any bill of parcels or invoice on account of his principal, made out in his (the broker's) name, or shall demand, receive or take any larger sum of money than the amount of the usual brokerage or commission.

7. That in the event of any broker becoming bankrupt, making composition with his creditors, or taking the benefit of any Insolvent Act, his licence to act as a broker shall forthwith cease and determine, and he shall not afterwards be permitted to exercise the office and employment of a broker, unless he shall be re-admitted upon application to this court.

8. That every broker shall and do enter every bargain or contract he shall make in a book to be kept in his office or counting-house, and to be intituled, "The Broker's Book," on the day of making every such bargain or contract, with the Christian and surname at full length, of both the buyer and seller, the quantity and quality of the articles sold or bought, and the price of the same, and the terms of credit agreed upon, and deliver a contract note to both buyer and seller, or either of them, upon being requested so to do, within 24 hours after such request respectively, containing therein a true copy of such entry.

9. That no broker shall take or receive double brokerage, that is to say, from both buyer and seller of the same article, but from the buyer or seller only, whichever it may happen to be that shall employ him; and that no broker be employed for both buyer and seller in

(*b*) See *post*, p. 430, note.

the same transaction, except only in regard to purchases made by brokers at public sales, and then always in such cases that the said purchases be made *bonâ fide*, and that the name or names of the principal or principals be entered in the broker's book immediately after the conclusion of the day's sale, or the space of 24 hours next after every such transaction.

10. That every broker shall keep by him an authentic copy of his admission, for his authority and the satisfaction of all persons concerned to know the same, upon being required so to do by any such person or persons.

11. That the penalty of the bond given by the brokers be increased, and that each broker shall enter into such bond in the penalty of £1,000, and find two sureties, to be approved of by the court, who shall enter into bond in the penalty of £250 each, for the due and just execution by the broker of his said office and employment.

12. That a copy of the bond entered into by brokers, and the oath taken on their admission, be advertised and otherwise made public.

13. That the names of all brokers admitted and discharged, shall, as soon after the order for their admission or discharge as the same can be conveniently done, be fixed up in a conspicuous manner at the Royal Exchange, and otherwise made public, as the court from time to time deem necessary and order.

In order to obtain the licence to act, the candidate must produce the copy of his freedom at the town clerk's office, on which his name and residence and date of application are entered in a book there. A form of petition is then given to him for signature, together with a blank form of certificate for the signature of his proposers, who must state how long they have known him.

On the return of the certificate duly filled up, the petition is set down by the town clerk for hearing, and notice is sent to the petitioner of a court of aldermen, at which it will be entertained, and at which time he is

required to attend in person. The court exercise their discretion in examining him at the time of his attendance on any point which occurs to them connected with his character and business.

The usual questions, when any are put, are, as to his former connections, whether he has been in business, and in what, whether he has ever been insolvent, &c. The question is then put to the court whether he shall be allowed to be admitted a broker; if this is carried in the affirmative, he is desired to attend at the town clerk's office, with three sureties—two for his good behaviour as a broker, and one (who may be one of the former two) for his payment of the annual rent of £5 (c).

On this being done, the broker is sworn in open court in the following form :—

“ You shall sincerely promise and swear, that you will truly and faithfully execute and perform the office and employment of a broker between party and party, in all things appertaining to the duty of the said office or employment, without fraud or collusion, to the best of your skill and knowledge.”

The condition of the bond is as follows :—

“ Whereas the above bounden (*mentioning the broker's name and description*) is by the court of lord mayor
“ and aldermen of the City of London allowed to be
“ admitted and sworn a broker within the same city

(c) 2 Rep. M. C. p. 190. The form of the broker's bond is given above. The penalty being £1,000, the two sureties are bound in £250 each, and the third, the security for the payment of the rent, in £50, see *ante*, p. 420. The payment of a rent of 40s. by brokers, it is said, can be traced back as far as the time of Hen. VIII., *id. ib.*; and the statutes of Will. III. and Anne were consequently merely in affirmance there-

of. The 57 Geo. III. c. LX. increased it to £5, as a compensation for the diminution of the profits of gauger, occasioned by the building of the London Docks. See *ante*, p. 395, note (b). This rent cannot, it seems, be now recovered in the court of requests, but only in the superior courts. See 5 & 6 Will. IV. c. XCIV. s. 22, *ante* pp. 204, 206, note (p).

“ and liberties, to have, use, and exercise the said
 “ office and employment during the pleasure of the
 “ said court, and no longer. Now the condition of
 “ this obligation is such, that if the said (*broker's name*)
 “ for and during such time as he shall and doth con-
 “ tinue in the said office and employment, shall and
 “ do well and faithfully execute and perform the same
 “ without fraud, covin, or deceit (*d*), and shall, upon
 “ every contract, bargain, or agreement by him made,
 “ declare and make known to such person or persons
 “ with whom such agreement is made, the name or
 “ names of his principal or principals, either buyer or
 “ seller, and shall keep a book or register, intituled
 “ ‘The Broker's Book,’ and therein truly and fairly
 “ enter all such contracts, bargains, and agreements,
 “ and the day of the making thereof, together with
 “ the Christian and surname at full length of both
 “ buyer and seller, and the quantity and quality of
 “ the articles, sold or bought, and the price of the
 “ same, and the terms of credit agreed upon, and
 “ deliver a contract note to both buyer and seller,
 “ or either of them, upon being requested so to
 “ do, within twenty-four hours after such request
 “ respectively, containing therein a true copy of such
 “ entry, and shall, upon demand made by any or
 “ either of them to manifest and prove the truth and
 “ certainty of such contract and agreement (*e*); and
 “ for the satisfaction of all such as shall doubt whether
 “ he is a lawful and sworn broker or not, shall, upon
 “ request, produce a medal of silver with Her Majesty's

(*d*) An unintentional mistake on the broker's part in the quantity or weight of the goods sold, though the cause of considerable loss to the principal, is no forfeiture of the bond. *Mayor of London v. Brandon*, 1 Holt, N. P. C. 438, in note.

(*e*) It is no breach of this bond

for a broker to refuse to allow his employer to inspect his contract book, if he at the same time add, it shall be produced at the proper time, and does produce it afterwards before a court of aldermen. *Mayor of London v. Brandon*, 1 Holt, N. P. C. 438, in note.

“ arms engraven or stamped on one side, and the arms
 “ of the city with his name on the other, and shall not
 “ directly or indirectly, by himself or any other, deal
 “ for himself or any other broker, in the exchange or
 “ remittance of money, or in buying any tally or tallies,
 “ order or orders, bill or bills, share or shares, or in-
 “ terest in any joint stock to be transferred or assigned
 “ to himself (f), or any other broker, or to any other
 “ in trust for him or them, or in buying any goods,
 “ wares, or merchandizes to barter or sell again upon
 “ his own account, or for his own or any other broker’s
 “ benefit or advantage; or make any gain or profit in
 “ buying or selling any goods over or above the usual
 “ brokerage; and shall and do discover and make known
 “ to the said court of lord mayor and aldermen in
 “ writing the names and places of abode of all and
 “ every person and persons that he shall know to use
 “ and exercise the said office or employment, not being
 “ thereunto duly authorized and empowered as afore-
 “ said, within 30 days after his knowledge thereof,

(f) The validity of this restriction was discussed in the case of *Ex parte Dyster, in re Moline*, 1 Meriv. 175, where it was held by Lord Eldon to be perfectly legal under the act of parliament, and founded on good policy.—In practice, however, it is very usual for the broker to make out the contract in his own name, as in the West India and other trades; and, in such cases, the broker is personally answerable for its fulfilment, notwithstanding the condition of the bond. See *Kemble v. Atkins*, Holt’s N. P. C. 429; confirmed by court on motion for new trial, 1 Moore, 6; *S. C.* 7 Taunt. 260, Mr. Justice Parke observing: “The great cause of complaint against brokers is their dealing

as general merchants, but here the parties knew every step of the transaction.”

In a subsequent case a broker sent a contract for the purchase of goods in his own name, and the vendor, objecting thereto, was told that there was an unnamed principal, which was really the case—the goods were then resold before delivery for the principal’s benefit, but he subsequently repudiated both the purchase and the sale, and the original vendor refused to deliver; and it was held that the broker, having made himself liable, might maintain an action in his own name for the non-delivery. *Short v. Spackman*, 2 B. & Ad. 962.

“ and shall not employ, or cause or permit or suffer
 “ any person or persons to be employed with, under,
 “ or for him, to act as a broker within the said city
 “ and liberties thereof, not being duly admitted as
 “ aforesaid (g); then this obligation to be void, and
 “ of none effect, or else to be and remain in full force
 “ and virtue.”

In addition to the penalty of the bond, a broker is liable to be discharged for misconduct by the court of aldermen; but such cases are very rare except on their own application.

A mere breach of the bond on the broker's part does not invalidate the transaction, but only subjects him to the penalty (h), unless he have acted both as broker and principal, which would be against the principles of common law (i); and a broker is bound to answer a bill in Chancery for discovery in aid of an action brought against him by his employer for misconduct, although the discovery would subject him to a forfeiture of the bond (k).

An old act of common council limits the number of sworn brokers to thirty, but as many as twice that number are now often newly admitted in one year (l); and there are at present, it is believed, between seven and eight hundred in London.

Twelve persons professing the Jewish religion, are permitted to act as brokers within the city, under the

(g) 57 Geo. III. c. LX. s. 2. Before this statute, it was held that a sworn broker need not employ only sworn brokers as clerks. *Mayor of London v. Brandon*, 1 Holt, 438; nor was a partner required to be admitted, *id. ib.*, per Lord Ellenborough, on motion for new trial, 2 Stark. 16. One of the old regulations prohibited the broker from selling between alien and alien. Norton's Disquisition,

&c. p. 41, quoting Lib. Alb. 130, and Liber L. 8.

(h) *Ex parte Dyster*, in *re Moline*, 2 Rose, Bankruptcy Cases, 354; and 1 Merivale, 156; and Holt, N. P. C. 436, *et seq.* in note.

(i) *Ex parte Dyster*, 2 Rose, 349; S. C. 1 Meriv. 155.

(k) *Green v. Weaver*, 1 Sim. 404.

(l) 2 Rap. M. C. p. 190.

above regulations, and receive a silver medal, which is transferable, and sold generally at from £800 to £1,500, exclusive of the expenses of transfer. Upon the decease of any of the holders without a previous transfer, the appointment falls to the lord mayor, and for it the sum of £1,500 has not unfrequently been given (m).

Another class of agents usually occupied on the Royal Exchange, are factors, whom we must not pass over in this place without some notice, though the regulations to which they are subject are better adapted for a work upon general commercial law than for one confined, like the present, to the City of London (n).

There is reason to believe that factors as well as brokers in London were formerly under the direct control of the civic authorities; though from the decline of the system, which we have before alluded to, of all whole-sale transactions being restricted to the public markets (o), this control has now sunk into abeyance. An act of common council, passed in 1665 (p) for regulating the cloth markets in London, declares that by ancient custom (q) of the city, "all *common factors*, brokers, and makers of bargains, within London and the liberties thereof, before the exercise of such their employments, have used to be allowed and admitted to exercise that employment by such persons and in such manner as the court of common council (r) have used to direct and appoint, and ought not in any other manner to exercise the same, which was so done, for that factory and brokery are no trades, and so are not subject to any rules or regulations as trades are" (s). This control of the civic authorities over cloth factors in particular, was subse-

(m) Montefiore's Com. Dict. tit. Broker.

(n) For a more particular account of the law of factors, see Paley's Law of Principal and Agent; Selwyn's Nisi Prius, tit. Factors; and Smith's Commercial Law, tit. Prin-

cipal and Agent.

(o) *Ante*, p. 405.

(p) 4th July, 17 Car. II.

(q) See *ante*, p. 387.

(r) See *ante*, p. 46.

(s) Strype's Stow, lib. 5, p. 280.

quently confirmed by the 8 & 9 Will. III. c. 9, compelling the latter to confine their dealings wholly to Blackwell Hall; but this market has been for some time abolished (*t*), and the restriction, of course, no longer remains, though the name of "Blackwell Hall Factor" is still retained (*u*).

The brokers and factors employed in the City of London at this day, may be classed as follows:—The brokers consist, 1. Of such as are immediately occupied in making mercantile contracts between buyer and seller (*x*). 2. Those who are connected with the money market in negotiating bills of exchange, called bill, discount, and exchange brokers, or public securities, under the name of stock and share brokers. 3. Shipping and insurance brokers: and, 4. Such as are employed in conducting public sales, who, properly speaking, come under the denomination of auctioneers. Of these the 1st class only will be treated of here, the remainder being reserved for another place, when the system with which they are identified will be more particularly treated of.

The merchants' brokers are subdivided into distinct classes, such as general, colonial, American, East and West India, Russia, Turkey, provision, produce and piece brokers, &c.; while some confine themselves only to particular articles of merchandize, as cochineal, coffee, cotton, drugs, drysaltery, dye wood, feathers, fruit, hides, furs and skins, indigo, ivory, lead, mahogany, metals, oils, rags, seed, silk, spice, sugar, tallow, tar, tea, timber, tobacco, turpentine, wine and spirits, wood, or wool.

The regular factors, like the merchants' brokers, usually confine themselves to one particular branch of trade, as will be seen by the classification of them given below (*y*). Unlike brokers, factors are always en-

(*t*) 55 Geo. III. c. XCIII.

(*u*) Note (*y*) *infra*.

(*x*) *Ante*, p. 416, note (*n*).

(*y*) *Viz. Factors*, consisting of

bacon, Blackwell Hall, boot and shoe, butter, cloth, cheese, coal, corn, fish, flannel, flour, general hide and leather, hop and seed, Irish

trusted with the actual possession of the property they have to deal with (*z*), and it is therefore the general rule for them to deal in their own names. Indeed, it is a very common practice for the same persons to unite the character of merchants and factors, acting in the latter capacity for correspondents abroad as to particular consignments, and in other respects retaining the character of ordinary merchants.

This double capacity of principal and agent was formerly productive of extreme inconvenience in this country; it being laid down as a principle of general law, that though a factor was invested with the actual possession of property, and therefore appeared to the world as the owner, and though, in pursuance of his ordinary authority as agent, he might absolutely sell the same for his principal, yet he had no power, whatever might have been the amount of his pecuniary advances upon the property, to pledge it with any one else to indemnify himself (*a*). The effect of this doctrine was, until the passing of the statute commonly called the Factors Act (*b*), absolutely to lock up the capital advanced by the factor until a suitable market could be found for the goods, or to subject the party receiving them in pledge to the imminent risk of total loss, if the factor did not personally redeem them;—a system which, considering the very intricate and extensive transactions in which factors are usually engaged, must have been productive of the greatest possible inconvenience, which the above statute has now remedied, by declaring that the shipper of goods, or the holder of any bill of lading, India or

linen, sail cloth, Scotch, Scotch oatmeal, sugar, and woollen factors.—*Salesmen*, who may be considered an inferior sort of factors, are employed in the butter, carrot, cattle, fish, oyster, fruit, game, general hay and straw, hide, meat, potato, poultry, sheep, and water-cress

trades.

(*z*) See *Baring v. Corrie*, 2 B. & Ald. 137.

(*a*) *Paterson v. Tash*, 2 Str. 1178.

(*b*) 4 Geo. IV. c. 83; amended by 6 Geo. IV. c. 94.

dock or other warrant (*c*), warehouse or wharfinger's certificate or delivery order (*d*), is to be deemed the true owner of the goods shipped or described in such document, so far as to entitle the consignee to a lien thereon for the amount of his advances, or to give validity to any contract or agreement made by the holder of such document for the sale or disposition, or deposit, or pledge thereof, unless such consignee, buyer, disponent or pawnee have had previous notice of the want of title of such shipper, &c.—6 Geo. IV. c. 94, ss. 1, 2. Goods may, however, be legally purchased from factors, &c. in such character, unless previous notice be given of their want of authority to sell—s. 4; and may be even pledged by them to the extent of their lien or interest therein, but not further—s. 5; which is also the case when the goods are pledged for a pre-existing debt or demand, although the want of title of the pawner were unknown to the pawnee—s. 3.

The routine of business upon the Royal Exchange is governed by particular customs and usages, not, indeed, existing, like the ancient customs mentioned before (*e*), from time immemorial, but gradually introduced into the mercantile system in more modern times, and, from their tendency to facilitate the dispatch of business and promote the mutual convenience of buyer and seller, wisely suffered to control the strict provisions of our general law; the evidence of mercantile men being always admitted in case of litigation, to explain such usages, on the well known legal principle that *cuique in sua arte credendum est* (*f*).

By the letter of our statute law, no contract for the sale of any goods, wares, and merchandizes for the value of £10 is good, except the buyer accept part of the goods so sold, and actually receive the same; or give something *in earnest* to bind the bargain, or in part payment; or

(*c*) As to which see *ante*, p. 376.

(*d*) *Id. ib.* p. 377.

(*e*) *Ante*, p. 9, *et seq.*

(*f*) *Valazzo v. Wheeler*, Loft, 631; *Edin v. East India Company*, 1 Wm. Bl. 299; 2 Burr. 1216.

some note or memorandum in writing of the bargain, be made and signed by the parties to be charged by such contract, or their agents lawfully authorized (g); but in the ordinary course of mercantile transactions on 'Change, it would be extremely inconvenient for such formalities to take place, and they are, therefore, obviated, by the broker being construed the agent of both parties to a bargain (h), and binding them by the delivery of certain documents called bought and sold notes (i), which we have seen are required by the broker's bond to be handed over to each party (h). The course is for the brokers belonging to any particular trade to search out both for buyers and sellers, and obtain their terms of dealing, such as the price, the extent of credit, &c., and afterwards to treat with those whom such terms will suit, in order to conclude a contract; but as the prices in many trades are extremely fluctuating, the general rule is, that the broker's authority to sell or buy, unless acted upon the day it is given, is considered to expire, and a contract afterwards entered into by him is not binding on the principal (l); and the authority of the broker may be always

(g) 29 Car. II. c. 3, s. 17; altered by 9 Geo. IV. c. 14, s. 7.

(h) *Simon v. Motivos*, 1 Bl. 599; *Rucker v. Cammeyer*, 1 Esp. 105; *Hinde v. Whitehouse*, 7 East, 569.

(i) *Thornton v. Meux*, M. & M. 43; *Rucker v. Cammeyer*, *sup.*; *Cumming v. Roebuck*, 2 Campb. 337; Holt, N. P. C. 172. It was at one time held that the entry in the broker's book was the original contract, *Haymand v. Neale*, 2 Campb. 337; but it has now been long settled otherwise, the bought and sold notes being admissible, whether the book be signed or not, *Grant v. Fletcher*, 5 B. & C. 436; *Goom v. Aftalo*, 6 B. & C. 117; and the entry in the broker's book is

not admissible to contradict or explain the variance between the bought and sold notes. *Thornton v. Meux*, *ubi sup.* The production of the copy of the note delivered to the party setting it up is sufficient *prima facie* evidence of the contract, without calling for the production of that in the possession of the other party; and if the latter insist upon a variance between them, he must produce that delivered over to him in order to prove it. *Hawes v. Forster*, 1 M. & R. 368.

(k) *Ante*, p. 422.

(l) *Dickinson v. Lilwall*, 4 Campb. 279, which was a case in the Irish provision trade.

countermanded before a memorandum of the contract of sale has been written and signed by him, even though he have previously entered into a verbal agreement under it (*m*).

The authority of the broker being ordinarily confined to the particular transaction in which he is employed, the greatest nicety is required in his making the contract which he enters into agree with his instructions; and if a general authority be given him to sell, and the name of the purchaser does not transpire at the time, a delivery of a contract to the vendor, by which credit is given, enables the latter to take a reasonable time to inquire into the sufficiency of the purchaser before assenting to its fulfilment (*n*). The bought and sold notes must also agree with one another, or the contract is void (*o*), even though the variance were unintentional on the broker's part (*p*); but not if the variance be *immaterial*, or capable of explanation by the usage of trade (*q*).

It is generally the practice with cautious brokers to keep secret the names of their principals until the negotiation is completed; and hence sometimes difficulties arise, in case of the insolvency of the buyer, as to the broker's personal liability: the rule in this case is, that notwithstanding the prohibition in the bond against a broker's dealing in his own name (*r*), he may, nevertheless, be looked upon as the principal until the name of the real principal be disclosed; but when this is done, the latter is the party liable (*s*); it being held that parol evidence may in every case be admitted to show who the real con-

(*m*) See *Farmer v. Robinson*, cited in note to 2 Campb. 339.

(*n*) *Hodgson v. Davies*, 2 Campb. 530, where a contract was delivered to supply goods to be paid for by bill, and the contract was retained by the vendor for five days. This was, however, held to be an *unreasonable time*.

(*o*) *Cumming v. Roebuck*, Holt,

N. P. C. 172.

(*p*) *Thornton v. Kempster*, 1 Marsh, 355.

(*q*) *Bold v. Rayner*, 1 M. & W. 343; and see *Maclean v. Dunn*, 4 Bingh. 724; 1 M. & P. 779.

(*r*) See *ante*, p. 423.

(*s*) *Railton v. Hodgson*, 4 Taunt. 576 n.; *Wilson v. Hart*, 7 Taunt. 295.

tracting party is (*s*), even after the broker's insolvency (*t*); but if the *day of payment* mentioned in the contract be suffered to elapse without a demand being made by the principal, the purchaser is justified in paying the purchase money over to the broker (*u*).

Factors and brokers are both ordinarily remunerated by a commission or per centage upon the sales or purchases they make for their principals, which varies in each different trade; it is, however, like the remuneration of all other agents, liable to be forfeited on account of any negligence in making the contract, by which the interest of the principal has been materially affected (*x*); and in some cases, by the usage of trade, the broker is not even entitled to commission though the contract goes off through the conduct of the principal (*y*); but in others, the remuneration of the broker is like that paid to a factor acting under a *del credere* commission, who, in consideration thereof, guarantees the solvency of the purchaser (*z*), and in such cases the commission becomes payable on the execution of the contract.

(*s*) *Wilson v. Hart*, 7 Taunt. 293.

(*t*) *Waring v. Favenck*, 1 Campb. 85.

(*u*) *Kymer v. Suwercropp*, 1 Campb. 111. Where, however, the contract was to pay by bill at four months, or by ready money, with a discount of $2\frac{1}{4}$ per cent. prompt in 14 days, it was held that the purchaser was not justified in altering the terms by private agreement with the broker, and paying the latter by bill at 2 months less $1\frac{1}{4}$ per cent. discount, although one of the alternative days of payment, *viz.* the day of prompt, had been suffered to elapse without any demand from the real vendor, *Campbell v. Hassell*, 1 Stark. 233: otherwise, if the alteration of the terms be made by the broker before the name of the prin-

cipal transpire, for in such case the broker is the only party with whom the purchaser can contract. *Blackburn v. Scholes*, 2 Campb. 341.

(*x*) *Hamond v. Holiday*, 1 C. & P. 384; *Hurst v. Holding*, 3 Taunt. 32; *White v. Chapman*, 1 Stark. 113.

(*y*) *Broad v. Thomas*, 7 Bingh. 99; *Read v. Rams*, 10 B. & C. 440; *Dalton v. Irwin*, 4 C. & P. 289, relating to the shipping trade.

(*z*) See *Mackenzie v. Scott*, 6 Bro. P. C. 280; and as to stock-brokers, see *Sutton v. Tatham*, 10 Ad. & Ellis, 27. In such cases the broker is personally liable, even though after the contract be signed he give up the name of his principal. See *Magee v. Atkinson*, 2 M. & W. 440.

CHAPTER XXV.

THE BANKERS' REGULATIONS, AND THE MONEY MARKET.

ALTHOUGH the Lombards and other money-lenders were, as we have seen (*a*), at a very early period settled in London, under their old name of keepers of banks (*b*), there do not seem to have existed before the time of Charles I. any traces of a regular monetary system in this country, by which the demand and supply of that essential ingredient of commerce could be at all regulated. The principal commercial transactions seem to have been carried on through the direct agency of the precious metals, and the chief efforts of government were employed in preventing the exportation of the current coin; officers called *Royal Exchangers* (*c*), being appointed at the principal ports, to give and receive bullion and foreign money in exchange for English, and to receive the difference in their current value for the benefit of the crown (*d*).

Bills of exchange, adopted in transactions with foreigners, formed no part of the circulating medium of the country, and were not admitted at all without the licence of the crown (*e*). The trader hoarded up his money in his own coffers, or in some instances ventured to deposit it in the Royal Mint as the safest bank of security, until it could be advantageously laid out on merchandize (*f*); while those who were in momentary need of capital, were compelled, at a great sacrifice, to apply to usurers for assistance.

(*a*) *Ante*, p. 415.

(*b*) From *banco*, Ital. for bench or stall used by the money dealers in public places, not even excepting the Temple at Jerusalem; see Mark, xi. 15.

(*c*) *Ante*, p. 415.

(*d*) See *And. Hist. of Commerce*, vol. 1, p. 162.

(*e*) *Id. ib.* p. 210.

(*f*) *Id. ib.* vol. 2, p. 68.

The panic caused in 1640 by the king making free with the money deposited in the Mint, at once transferred into private channels the funds which had previously been deposited there. The London goldsmiths, who had for many years been in the habit of dealing in coins and in the foreign exchanges (*g*), commenced the business of regular bankers (*h*); and during the commonwealth, many projects were put forth for the establishment of public banks, on the principle of those at Venice, Amsterdam, Genoa, &c.; and it was in imitation of the latter that the scheme was afterwards adopted of establishing the Bank of England, with numerous privileges above the private establishments, but by no means to their entire exclusion.

The Bank of England is a joint stock company, incorporated by charter (*i*), under the name of "The Governor and Company of the Bank of England." The present capital of the company is about £28,000,000, consisting of bullion and public and private securities, including the whole of that portion of the national debt denominated Bank Stock. No other banking company of more than six persons can, during the continuance of the charter, "make or issue in London, or within 65 miles thereof, any bill of exchange, or promissory note, or engagement for the payment of money on demand" (*k*); but such banking copartnerships or companies are not restricted in any other respect, unless they "borrow,

(*g*) The jealousy of the Crown against the money transactions of the goldsmiths had been shown several years before, by the issuing of a proclamation against this practice, and reviving the ancient office of Royal Exchanger. *And. Hist. of Commerce*, vol. 2, pp. 28, 34, 35.

(*h*) *Id. ib.* p. 77.

(*i*) Dated 27th July, 1694, to be found at large in *Petersdorff's Abridgment*, vol. 3, p. 399, granted in pursuance of the stat. 5 & 6 Will.

& Ma. c. 20, and continued by various subsequent statutes, all set forth in the case of *Bank of England v. Booth*, 2 Keen, 446, and ultimately by the 3 & 4 Will. IV. c. 98, until August, 1844, and the expiration of one year's subsequent notice.

(*k*) 3 & 4 Will. IV. c. 98, s. 2, which, however, permits country notes for £5 and upwards to be made payable in London, as well as the place where issued.

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owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof" (l); and the Bank of England notes are declared to be a legal tender for any sum of money, except at the Bank itself, or any of its branches (m). Weekly accounts, however, are required to be sent to the Chancellor of the Exchequer of all such notes in circulation, as well as of the securities, deposits and bullion in the hands of the Bank for the time being (n).

The Bank of England is, as we shall see hereafter (o), intimately connected with the management of the national finances; and, by the power it holds over the currency of the country, by increasing or diminishing its circulation, it is properly looked upon as a in great degree a national establishment; but as a bank of deposit (p) it differs very little from the ordinary private

(l) *Id. ib.* s. 3. The seeming discrepancy between these two sections gave occasion to a dispute between the London and Westminster Bank and the Bank of England, as to the power of the former to accept bills in the course of their business as bankers at less than six months; and it was decided by the Court of Common Pleas, after solemn argument, that such a course of dealing was an infringement of the Bank charter; see *Bank of England v. Anderson*, 4 Scott, 50.

(m) 3 & 4 Will. IV. c. 98, s. 6, and are now payable at the counter, instead of drawing tickets, as was formerly the practice.

(n) *Id. ib.* s. 8.

(o) *Post*, p. 442.

(p) The Bank receive dividends, by power of attorney, for all persons having drawing accounts at the Bank, and dividend warrants are received at the drawing office for them

until 5 o'clock, as likewise are exchequer bills and other securities, in the same manner as at private banking houses, (*post*, p. 436;) and cash boxes deposited for safety without the contents being known. Cheques may be drawn for £5 and upwards; cheques on city bankers, paid in by 3 o'clock, may be drawn for between 4 and 5 o'clock; and if paid in before 4 o'clock, are received and passed to account the same evening; if paid in after that hour, are sent out at 9 o'clock the following morning, received, and passed to account, and may be drawn for as soon as received. Credits paid into account are received without the bank book, and are afterwards entered therein without the party claiming them. Bills of exchange, accepted payable at the Bank, are paid with or without advice; formerly with advice only; and cheques are given out in books as at other bankers. Notes

establishments in this city, which it is now necessary to notice.

The *goldsmith(q) bankers*, as they were anciently called, in London, have continued to increase in number and in wealth ever since their first establishment, notwithstanding the opposition of the Bank of England; and at this day are very properly considered, both from their great utility to commerce, and their inability to introduce artificial changes in the currency, as even more deserving of public protection than the chartered establishment; and when the principles of the joint stock companies, which have been so recently legalized in this city, have been found to be completely successful, it is a question whether the exclusive privileges of the former will be again renewed. Through the London banking houses, the whole of the money transactions in this city, of any importance, are conducted without the personal inconvenience to the merchant of paying and receiving in the current coin, or to the public of an unnecessary large circulation; accounts being usually settled among mercantile men either by a cheque upon the debtor's bankers, or a bill of exchange payable there, and these being usually paid into the creditor's bankers, are arranged between them in the simple and expeditious mode which we shall presently describe; and as all the provincial banks, and many of those on the Continent, have agents or correspondents among the London bankers, money transactions arising in those quarters are easily adjusted in the same manner.

Sums which are paid to the credit of a customer with

of country bankers, payable in London, are sent out the same day for payment. *Ev. of Mr. Horley Palmer before the Bank Committee.*

(g) It was for a long time usual with the London bankers to become free of the Goldsmiths' Company, see *London Magazine* for 1746, p. 129; a very natural custom for the

successors of the original houses, many of whom, of course, inherited a claim to such freedom, but this seems to be now gone into disuse. The father of the profession of the goldsmith bankers, as Pennant observes, was Sir Francis Child, the founder of the respectable house which still bears his name.

a banker, though usually called deposits, are in truth loans by the customer to the banker (*r*), and hence the obligation upon the latter to at all times honour the customers' cheques when a sufficient balance remains on hand (*s*); but it is usual in London, as we have seen, for bills to be deposited with bankers, in order to be presented when they arrive at maturity (*t*); which is also the case with exchequer bills (*u*); the bankers receiving the interest upon them at certain periods, announced to the public by advertisement, and at the same time the amount of the principal, or new bills in lieu of the old ones, at the option of the owner (*x*).

As a general rule, bankers have a lien upon all such securities deposited with them for the balance of their account against the customer (*y*); but not if left for other purposes than as a deposit, or in order to be discounted (*z*), especially if the securities are the property of a third

(*r*) Per Lord Denman, Ch. J., in *Sims v. Bond*, 5 B. & Ad. 389.

(*s*) *Marzetti v. Williams*, 1 B. & Ad. 415.

(*t*) *Anse*, p. 435. A banker is authorized to take in payment of such bills a cheque upon another banker, though it afterwards turn out dishonoured. *Russell v. Hankey*, 6 T. R. 12.

(*u*) These instruments are from time to time issued by the authority of government to raise the amount required for the public service of the year, or other purpose, under the provisions of the statutes 48 Geo. III. c. 1, and 4 & 5 Will. IV. c. 15. They must be signed by the comptroller of the exchequer or his assistants, and numbered arithmetically, *id.* ss. 3 and 26; if not filled up, they pass as a part of the circulating medium of the country, *Wookey v. Pole*, 4 B. & Ald. 1. They

are generally circulated by the Bank, under a contract with the government, and are paid or exchanged, when arrived at maturity, at the exchequer bill office. The advances of the Bank to government are made upon exchequer bills; and the daily transactions between the Bank and government are principally carried on through their intervention. They are also used in payment of the instalments on loans into the exchequer, and of taxes and other Crown debts.

(*z*) See *Brandao v. Barnett*, 1 M. & G. 908.

(*y*) *Jourdain v. Lefevre*, 1 Esp. 66; *Bolland v. Bygraves*, R. & M. 271; *Wookey v. Pole*, 4 B. & Ald. 1.

(*x*) *Lucas v. Dorrien*, 7 Taunt. 278; 1 Moore, 29; and see *Brandao v. Barnett*, *sup.*

person (a). Bankers are authorized, like factors, ordinarily to pledge bills in their possession to an innocent party (b): so they may negotiate them to such an extent as the necessary demands of the customer require, without his express authority (c).

The banking arrangements in London are conducted on one uniform and systematic plan, in order, as much as possible, both to save time and secure punctuality; and these arrangements are generally regarded in courts of law as a part of the settled usage of commerce, by which all money transactions are regulated. The ordinary banking hours are from 9 to 5, and this interim is again further divided for particular purposes. For instance, no money can in general be received on account of a country remittance until 11 in the morning, nor remitted from London and advised on the same day after 3 p. m. Money paid in after 4 p. m. on a town account, is not immediately carried to the customer's credit, but is entered *short* in the bank books as a memorandum for the next day. A cheque presented for payment in banking hours, any reasonable time after cash has been paid in, must be honoured, or an action lies at the suit of the maker for the consequences (d). By established usage, however, in London, if the cheque be crossed with a banker's name, it is not paid except through the medium of such banker (e), and thus its proper application is ordi-

(a) *Id. ib.*

(b) *Collins v. Martin*, 2 Esp. 250; 1 B. & P. 648; *secus* with bill-brokers, whose ordinary province it is to act for others, and therefore does not admit of their pledging their employers' property, at least, for an antecedent debt due to themselves, *Haynes v. Foster*, 4 Tyr. 65; 2 C. & M. 437.

(c) *Thompson v. Giles*, 3 D. & R. 733; 2 B. & C. 422.

(d) *Marzetti v. Williams*, 1 B. & Ad. 752.

(e) See *Stewart v. Lee*, M. & M. 158, where the custom was held not to apply, to prevent the bankers in whose favour it was crossed from receiving and applying it to any other account which they might be directed to do, besides that of the actual drawee. It was also stated in the same case by the special jury, that the holder might even strike out the original crossing, and substitute another banker's name, as well as insert such name when the crossing

narily secured. The payment of these cheques and bills also among the city bankers (*f*) is arranged in a manner peculiar to this city, by means of the *clearing house*, which is a place of meeting, situated in Lombard Street(*g*), where each of the city banking houses sends a clerk twice a day, *viz.* at 11 and 3 o'clock : at the former hour, all bills and drafts in the hands of such bankers falling due on that day are taken and deposited in proper drawers there, according to the house at which they are made payable, and every clerk takes an account of those placed in his own drawer, and returns home therewith at 12 ; at 3 the process is repeated ; and thus a correct account is taken of all the cheques and bills to be received and paid. The additional cheques and bills paid in until 4 o'clock are forwarded to the clearing house as they are received (*h*), with an account of the balance of each cus-

was merely "*and Co.*" without anything else, but that in neither of such cases could the cheque be paid, except through a banker.

(*f*) A list of whom will be found in note (*e*), *post*, 439. The joint stock banks are not as yet counted among the number, and with these, as well as the West End establishments, cheques and bills are presented and paid in nearly the same manner as where the holders are not bankers. The banking houses divide London into a certain number of districts, called the East Walk, West Walk, &c., to each of which clerks are sent every morning with bills and cheques which do not pass at the clearing house. The bills are left the first thing in the morning, and called for by the clerks on their return from their rounds at about eleven o'clock. During the interim, the bill is considered *in course of presentment*, and if the bankers to whom it is so pre-

sented receive funds a reasonable time before a bill is taken back, they are liable to an action for not paying it, *Whitaker v. Bank of England*, 7 Car. & P. 700 ; and *C. M. & R.* 752 ; but a banker is not bound to pay after banking hours, and the leaving a person in the evening to answer inquiries is merely for the notary's convenience, in order to make his protest. *Id. ib.*, and *Garnett v. Woodcock*, 1 Stark. 114 ; *Henry v. Lee*, 2 Chitty's Rep. 125.

(*g*) Next door to the banking house of Messrs. Smith, Payne, and Co., to whom it belongs.

(*h*) It would appear that the negligence of a banker frequenting the clearing house, to get a cheque cleared in this manner, would subject him to an action at the suit of a customer for any loss sustained thereby ; but as the holder of a cheque has ordinarily until the next day to present it, the banker's neg-

tomer. When the clearing house clock strikes 4, no more cheques or bills are taken (i), but the clerks proceed to strike a general balance of their accounts, by each clerk placing the proper debt or credit balance against the names of the banking houses in the printed form given below*, and then comparing and correcting the items with each other *seriatim*, and the general balance of debits and credits only remains. At 5 o'clock, the clerks return to their respective houses in order to vouch their clearing balances with the books at home, and to fetch the amount which they have to pay; and in a quarter or half hour afterwards they return, and those who have to pay hand over the proper amount in Bank of England notes (k), to those

lect would be no defence as against the drawer. See *Boddington v. Schlenker*, 4 B. & Ad. 752.

(i) If a bill or draft brought from the clearing house be afterwards refused payment by the bankers, it must be returned to the proper drawer at the clearing house before 5 o'clock, or it is debited against the banker; and when the bill has been left at the morning clearing, it is

usual to return it before 4 o'clock. Cheques paid in after 4 o'clock, are usually sent to the house on which they are drawn, and marked for payment the next day, it not being usual for bankers to pay one another after that hour, and if it be refused to be marked, it is returned to the holder as dishonoured.

(k) No gold, silver, or copper, are paid at the clearing house; all

* Of which the following is a copy :—

GLYN & CO.

| Drs. | | Crs. | |
|---------|-----------|---------|-----------|
| £ s. d. | | £ s. d. | |
| | Barclay | | Masterman |
| | Barnard | | Prescott |
| | Barnett | | Price |
| | Bosanquet | | Robarts |
| | Brown | | Rogers |
| | Curries | | Smith |
| | Denison | | Spooner |
| | Dorrien | | Stevenson |
| | Fuller | | Stone |
| | Hanbury | | Vere |
| | Hankey | | Weston |
| | Jones | | Williams |
| | Lubbock | | Willis |

who have to receive. In order to secure greater accuracy, two paid inspectors are appointed, who examine and mark each balance sheet, and the amount to be paid from one clerk to another.

Bill Brokers.—A great part of the money transactions in London is conducted through the agency of *Exchange*, and *Bill* and *Discount brokers*, the former of whom are employed in negotiating foreign bills on the Royal Exchange and elsewhere, to those who are desirous of remitting money abroad; and the regular days for this purpose are those on which the principal foreign mails leave London, *viz.* Tuesdays and Fridays; and the expenses of commission, and the rate of exchange, are ordinarily charged to the acceptor abroad. Bill and discount brokers are employed in the negotiation of inland bills of exchange, which are principally taken by bankers and other large capitalists, including many of the brokers themselves. Thus the Bank of England (*l*) is authorized to discount bills not having more than 95 days to run; and by the established practice of the Bank, none such can be offered except they are made payable at a regular banker's; and the rate of interest varies, of course, according to the state of the money market for the time being, public notices thereof being from time to time given by the bank.

amounts under £5 being carried to the next day's account; and country bank notes are always exchanged in the morning for a memorandum from the banking house where they are payable in London, which is passed at the afternoon clearing as a cheque.

(*l*) No bill of exchange, drawn in the country, is discounted by the Bank in London under £20, nor any London note under £100. A per-

son having a drawing account there may have a discount account, but not the latter without the former. When a discount account is opened with the Bank, the signatures of the parties are entered in a book kept for the purpose, and powers of attorney are granted, empowering the persons named in them to act for their principals. M'Culloch's Com. Dict. tit. Bank of England.

CHAPTER XXVI.

THE STOCK AND SHARE MARKET.

INTIMATELY connected with the money market, are the transactions which are at this day always taking place in the sale and purchase of portions of the public securities; indeed, so much so, that, laying aside all other considerations of the frightful consequences of an attempt to abolish our immense national debt, it is pretty obvious, that even were such a step in any way practicable, the sudden withdrawal of so convenient, ready, and safe an investment for the surplus capital of the mercantile classes would be the most effectual means of deranging the currency, and bringing confusion on all our commercial operations.

The history of the national debt goes hand in hand with that of the Bank of England, and it requires no gift of prophecy to foretell that the former, though it may be expected to have now ceased to grow, will long continue after the exclusive privileges of the latter, its foster-parent, have been crumbled in the dust. Under the act of parliament which originally established the Bank, the government borrowed of that company the sum of £1,200,000, which has been since further increased, so as at the present time to amount to £10,914,750, besides temporary advances. This loan may be well styled the commencement of the *funded system*, which was so called from the circumstance of particular *funds*, or portions of the national revenue, being at first expressly set apart to repay the money borrowed; a system which was further acted upon in the arrangements with the East India Company, and subsequently with the South Sea Company; the latter being at one time looked upon as prosperous enough to be

enabled to buy up the whole of the national debt, then continually increasing by the issue of exchequer bills and grants of annuities; and it was not until after a few years of calamitous experience that the public mind was awakened from such a visionary scheme; and since that time the arrangement of the national debt, rapidly increasing in amount, has been always managed by the ministers of the Crown, acting through the agency of the Bank of England, in pursuance of the original Bank Act (*a*), by which the Crown was empowered "to direct how and in what manner and proportions, and under what rules and regulations, transfers in the public funds should be made;" which arrangement has been confirmed with the Bank by several subsequent statutes (*b*); and the management of transfers of stock is now wholly conducted at the transfer office at the Bank, or the South Sea House; a note in writing being made out containing the name and designation of the seller and purchaser, and the sum and description of the stock to be transferred. This is delivered to the proper clerk, in order to make out the transfer in the books, after the requisite search has been made for the entry of the amount possessed by the seller at the time. The transfer in the books is then signed by the seller, together with a form of receipt for the amount in the presence of one of the clerks; and the purchaser having signed his acceptance of the stock, the amount is paid, and the business is completed. The parties not being generally present in person, powers of attorney are used as occasion may require, either to sell, to accept a purchase, or merely to receive the dividends. Some comprehend all these objects, and the two last are generally united (*c*).

(*a*) 5 & 6 Will. & Ma. c. 20, s. 20.

(*b*) 3 Geo. I. c. 7; 4 Geo. I. c. 10, &c.

(*c*) Hamilton on the National

Debt, p. 314, 3rd ed. Powers of attorney authorizing to sell must be deposited in the proper office, for examination, one day before selling: a stockholder, acting personally, after

The Bank, being the agents of government in the management of the funds(*d*), are under a legal obligation to transfer the same according to the directions of the owner for the time being(*e*), and are liable for the consequences of acting upon a forgery, unless caused by the negligence or misconduct of the owner himself(*f*); and the transfer books are evidence of the transactions entered therein(*g*).

The negotiations for the sale and purchase of funded property are chiefly conducted by brokers, whose presence it is the custom of the Bank to require in order to identify parties claiming to receive dividends or transfer shares. These brokers, like all others in London, we have seen, are strictly under the regulation of the civic authorities(*h*), and were the subject of a statute(*i*) passed immediately after the commencement of the funded system, the first establishment of which seems to have been accompanied with the practice of schemes of fraud and speculation(*k*), since that time in vain attempted to be suppressed by legislative enactment.

By the statute 7 Geo. II. c. 8(*l*), commonly called Sir John Barnard's Act, "To prevent the infamous Practice of Stockjobbing," it is enacted, that all contracts upon which any premium or consideration in the nature of a premium shall be given or paid, for liberty to put upon, or to deliver, receive, accept or refuse any public or joint stock, or other public securities whatsoever, or any part, share or interest therein, and also all wagers and contracts in the nature of wagers, and all contracts in the nature

granting a letter of attorney, revokes it by implication.

(*d*) *Ante*, p. 442.

(*e*) *Argent v. Bank of England*, 1 Young & C. 557.

(*f*) See *Davis v. Bank of England*, 2 Bingh. 393; 5 B. & C. 185; *Coles v. same*, 10 Ad. & E. 437.

(*g*) *Breton v. Cope*, Peake, 430;

and see *Every v. Hopkins*, 2 Ld. Raym. 851; *Marsh v. Colnet*, 2 Esp. 665.

(*h*) *Ante*, p. 417.

(*i*) 8 & 9 Will. III. c. 32.

(*k*) See And. Hist. of Com. vol. 2, p. 218.

(*l*) Made perpetual by 10 Geo. II. c. 8.

of "puts or refusals," relating to the then present or future price or value of any such stock or securities as aforesaid, shall be null and void to all intents and purposes whatsoever; and all premiums, sum or sums of money, whatsoever, which shall be given, received, paid or delivered upon all such contracts or agreements, or upon any such wagers, or contracts in the nature of wagers as aforesaid, should be restored and repaid to the person giving, paying, or delivering the same, who should be at liberty, within six months from and after the making such contract, &c., to sue for and recover the same in the manner therein mentioned—s. 1; and the statute further enables the plaintiff in such action to file a bill of discovery against the defendant in support thereof, on giving security for the costs—ss. 2 and 3; and a penalty of £500 is imposed on the parties to such contracts, &c. in default of the above proceedings being taken—s. 4; and a further penalty of £100 for giving or receiving money to compound differences relating to stock not actually transferred—s. 5. Stock sold to be delivered and paid for at a future day, and not paid for on such day, may be resold, and the difference in value recovered from the buyer—s. 6; and in like manner, if such stock be refused or neglected to be transferred, the buyer may purchase an equal amount of stock at the then current price, and recover the difference in value from the seller—s. 7. All contracts for selling stock not at the time of the contract in the actual possession of the vendor, or some one in trust for him, are declared void, and the vendor is liable to a penalty of £500, and the broker or agent, if cognizant thereof, to a penalty of £100—s. 8 (m).

This being a penal statute, is construed strictly, and does not therefore include transactions in any public funds, or shares not mentioned in it. Therefore, though

(m) The act does not interfere with contracts made with the privity of the accountant general of the Court of Chancery, or under an

order of that court, or to agreements for the loan of money upon the security of stock at legal interest.—ss. 10 and 11.

jobbing in any English funds, whether created since the statute or not, and even in omnium, which is made up of parcels of various funds put together, is illegal (n), yet transactions in foreign funds are not so (o); and in fact, as we shall see, it is a great question whether the Stock-jobbing Act, in attempting to put down the practices which it decries, does not, like the usury laws, merely add to the mischief by hampering the parties to such transactions with additional difficulties, which the loser has to pay for; and as much greater speculations are now commonly made in the foreign securities and railway and other shares, than in our own funds, the provisions of the statute are for the most part nugatory.

All the transactions of any consequence in this city, in stocks and shares, now take place in the *Stock Exchange*. The old form of the London broker's bond, which remained in force till the year 1818, contained an express provision prohibiting the brokers from "presuming to meet or assemble in *Exchange Alley*, or other public passage or passages within the city and liberties, other than the *Royal Exchange* (p), to negotiate their business and affairs of exchange" (q). This regulation was occasioned by the public obstructions caused by the stock-brokers crowding together in the avenues and alleys leading to the Bank and the Exchange, by which great facilities were afforded to dishonest persons to assume the character of brokers, and great frauds and malpractices were the necessary result.

The more respectable class of stock-brokers, however, were many years ago in the habit of adjourning to a house

(n) *Brown v. Turner*, 7 T. R. 630; *S. C.* 2 Esp. 631; *Oliverson v. Coles*, 1 Stark. 496.

(o) *Henderson v. Bise*, 3 Stark. 158; *Oakley v. Rigby*, 2 Bing. N. R. 732; *Wells v. Porter*, *ib.* 722.

(p) Under the 5 & 6 Will. & Ma. c. 20, s. 20, mentioned *ante*, p. 442, the Crown appears to have appointed the Rotunda in the Bank of Eng-

land as the *rendezvous* for dealers in the public securities; see *Shales v. Seignoret*, 1 Ld. Raym. 441; and brokers, not regularly admitted members of the Stock Exchange, were in the habit of meeting there till a very recent period.

(q) See the form in 1 Meriv. 157; and *Kemble v. Atkins*, 1 Holt's N. P. C. 432, note; *ante*, p. 421.

in Threadneedle Street, in order to transact their business in greater privacy (*r*); and in the year 1801, by a public subscription among them, the present *Stock Exchange* in Capel Court was built; and since that time a body of regulations have been framed for their government, by which their business is conducted on a far more systematic plan than that to which they were subject when solely under the control of the municipal body.

Business in the foreign funds and in shares was not carried on in the Stock Exchange until a very recent period, but was principally in the hands of merchants and others frequenting the Royal Exchange. On the great increase, however, in the negotiation of foreign loans in this country after the peace, a room was opened by the English Stock Exchange for the accommodation of persons interested therein, who were invited to become members; and about eight years ago the English and Foreign Stock Exchange became united, and they are both now carried on in Capel Court; and the very extensive transactions now going on in railway and other joint stock shares, are also for the most part conducted there.

The Stock Exchange belongs to a joint stock body, consisting of all the professed stock brokers and jobbers in the metropolis; and the sole management, regulation and direction of the establishment (including the right of admission, expulsion, or suspension of members) is entrusted to a committee for general purposes, composed of thirty members, annually chosen by ballot on the 25th of March (*s*), and meeting on every alternate Monday, at one o'clock. The election of members (whether proprietors or not) is made by ballot, after a written application to the secretary of the committee, stating the name and residence of the applicant, as well as that of his bankers,

(*r*) To this house any person was admissible on payment of 6*d.* a day, but this being found inconvenient, the election by ballot was intro-

duced on the establishment of the new building. Macpherson's *Annals of Com.* vol. 2, pp. 703, 704.

(*s*) Deed of settlement, ss. 5 and 7.

and an undertaking to comply with the rules of the house.

The applicant must not be engaged in any other business, even as a bill or discount broker, and cannot enter into partnership with any one who is not a member, or allow his wife to carry on business; and a recommendation is required from three members (*t*) of at least two years' standing, and not having been defaulters, who must enter into securities in the sum of £300 each, for payment of the applicant's debts if he should become a defaulter. But the recommendation and security vary when the party has either been a clerk in the house for the three previous years, or a member of the *foreign house* (*u*) for five years, or is a foreigner not naturalized, and not having letters of denization.

A person who has been a bankrupt, or has compounded with his creditors, is not eligible until two years after he has obtained his certificate, or fulfilled the conditions of his composition deed, or paid his debts in full; or in case he have been twice bankrupt, until he have paid the full twenty shillings in the pound. No clerk can be admitted to act for a member of the Stock Exchange, without the consent of the committee on his master's written application, stating the extent of his authority;—a list of such clerks, and the nature of the authority given them, is put up on the Stock Exchange, and their authority is considered to continue till revoked by letter to the committee.

No other persons can act as clerks, and members doing business with them are liable to expulsion. Members cannot act as clerks to other members, without leave of the committee; and a list also of such persons, with the nature of the powers conferred on them by their em-

(*t*) Neither of whom must be a partner of the applicant; and the securities of any surety who enters into partnership with the applicant,

within two years from the time of his admission, are *de facto* void.

(*u*) See *ante*, p. 446.

ployers, is exhibited in the house. The expulsion or death of members *de facto* terminate the clerks' authority.

The members of the Stock Exchange, besides the mere speculators, who cannot be recognized as a distinct class, consist of brokers and jobbers. The legitimate province of the broker is merely to negotiate contracts between buyer and seller; and in discharge of this duty, besides being under subjection to the civic authorities (*x*), stock-brokers are also expressly regulated by Sir John Barnard's Act (*y*), which requires all persons acting as brokers, receiving brokerage in the buying, selling, or otherwise disposing of any of the public or joint stocks, or other public securities, to keep, under a penalty of £50, a book or register, called the Broker's Book (*z*), and fairly, justly and truly enter therein all contracts, agreements and bargains to be from time to time made between any person or persons whatsoever, on the day of the making the same, together with the names of the principals, as well buyers as sellers, and also the day of making the same, in order to be produced when required.

The broker, being merely an agent, is not liable to the penalties of the Stock-jobbing Act, unless cognizant of the illegal nature of the transaction between his principals (*a*), but being amenable to the Stock Exchange committee for the observance of their rules, by which he is looked upon in all transactions negotiated there as the principal, he is justified in paying over, on behalf of his employer, the amount to which he is liable, and can afterwards recover it from him (*b*).

The jobber, though a great part of the transactions in which he is engaged are prohibited by the statute in question (*c*), is a very essential part of the machinery of

(*x*) *Ante*, p. 417.

(*y*) 7 Geo. II. c. 8, s. 9.

(*z*) See *ante*, p. 422.

(*a*) *Ante*, p. 444.

(*b*) See *post*, p. 455.

(*c*) *Ante*, p. 444; and see *Morris v. Langdale*, 2 Bos. & P. 239; it has been recently decided, however,

the Stock Exchange, and without his interposition the marketable value of the funds (which so much depends upon the readiness with which on any emergency they can be turned into cash) would be materially diminished.

The jobber is a middle man, whose business it is to accommodate the buyers and sellers of stock with the exact amount they want; and being himself generally possessed of considerable property in the funds, he declares a price at which he will buy or sell, the difference between the two prices (usually about $\frac{1}{8}$ per cent.) being the profit which he makes; so that immediately a broker has received orders from his principal, he need only apply to a jobber, and they can be immediately executed (*d*).

The hours of business on the Stock Exchange are from 10 to 4, and no bargain is recognized there unless made between these hours (*e*); and all disputes between indi-

that a contract to deliver stock afterwards actually transferred, though not at the time of the contract in the vendor's possession, is not within the Stock Jobbing Act, thus virtually legalizing the ordinary business of a stock jobber, *Mortimer v. M'Callum*, 6 M. & W. 58; 7 M. & W. 20; but as the jobber is often exposed, by the accident of a sudden fall or rise in stock, to considerable risk of loss in completing his engagements, he is induced to infringe upon the provisions of the act of parliament by making mere bargains for differences, or insuring himself from loss by purchasing what is called the *option* of either buying or selling at a certain price on a given day. The stock transfer books being closed at particular periods, in order to enable the dividends to be paid, leave interims, during which some degree of speculation must necessarily take place by the sale of

stock, which cannot be at once transferred; but in addition to this kind of time bargains, sales are made, for what are called "settling days," when generally accounts are arranged between all the members of the house, see *post*, p. 454; these arrangements are most materially facilitated by the system of the clearing house before alluded to, without which, the large sums daily received and paid by members of the Stock Exchange, personally possessed of small capital, could never be adjusted. The cheques, which pass in these transactions being crossed with a banker's name, are never presented for payment, until the requisite funds to meet them have been received. See *ante*, p. 437.

(*d*) M'Culloch's Com. Dict. tit. Funds.

(*e*) Stock Exchange Regulations, tit. *Bargains*, 1.

viduals (not affecting the general interests of the Stock Exchange), are required to be referred to *arbitration*, and the committee do not interfere in such disputes unless that resource prove ineffectual (*f*).

No member of the Stock Exchange is obliged by the rules of the house to take a *transfer ticket* for stock sold in the house, which refers him for payment to a *person not a member* thereof; nor to pay any *non-member* for stock or other securities bought on the Stock Exchange, and which may be tendered to him for payment by such party (*g*). And any person having sold stock or other securities, and transferred or delivered the same according to the tickets or directions given him by the buyer, has a right to demand direct payment of him, notwithstanding any reference to a third party being upon such ticket or direction; but in case no objection is made, and the seller does apply to the party referred to, and is either refused payment, or receives a cheque which is afterwards dishonoured, the buyer is not exonerated, but continues liable to immediate payment (*h*); and the rules of the Stock Exchange are in other respects very minute on the subject of bargains made there (*i*), as are also the

(*f*) *Id. ib. 2.*

(*g*) *Id. ib. 3.*

(*h*) *Id. ib. 4.*

(*i*) For instance, bargains made by mistake, for a day which may happen to be a *holiday*, must be fulfilled on the next open day (whether a regular transfer-day or not) after such holiday.—*Id. ib. 5.*

Every member who may have sold stock or shares, and does not receive from the purchaser of stock a *transfer ticket*, on or before *half past one o'clock*, or from the purchaser of shares, on or before *half-past two o'clock*, on the day upon which it was contracted to deliver the same, has a right to *re-sell* the same, through the medium of a broker,

and to claim of such purchaser any loss or charge which may have been incurred thereby.—s. 6, see *ante*, p. 444.

Every member who have may purchased stock, or other securities, on or for a particular day, which stock or other securities shall not have been *transferred* or *delivered* on such day, has a right to buy in the same on the following day at 11 o'clock (or as soon after as possible), through the medium of a broker; and to claim of the seller any loss or charge which may have been incurred thereby; and also $\frac{1}{2}$ per cent. for the non-delivery of the stock agreeably to contract; and this fine attaches to all stock not absolutely transferred

rules to be followed in quoting the prices of stocks, &c. which are regularly published.

on the day for which it was bought, whether the same has been bought in or not.—s. 7.

A member who may have purchased stock on or for a particular day, the transfer receipt for which stock shall *not have been tendered to him* on or before four o'clock on that day, is *not obliged to wait* beyond that time; and every member who may have purchased any other securities, on or for a particular day, which shall *not have been delivered to him* on or before three o'clock on that day, (except in the case of English omnium or scrip, not paid in full, which must be delivered on or before two o'clock) is at liberty to *re-purchase* the same through the medium of a broker, and to claim of the seller any loss or charge which may have been incurred thereby.—s. 8.

When stock is borrowed without any particular agreement being made at the time by the parties for its return, the borrower or lender may be called upon to deliver or take the same on the following day, whether a regular transfer-day or not.—s. 9.

The committee will not decide any question respecting the loss incurred by buying-in or selling-out stock, shares, or other securities, unless such question be referred to them *within fourteen days* from the day on which such purchase or sale took place.—s. 10.

When stock, or other securities, are sold for bank notes, payment must be made upon delivery of the

securities, *or the Bank receipt*; but no member of the Stock Exchange, who has taken a cheque of another member in payment for stock, or other securities, must present, or allow such cheque to be presented for payment, except through the medium of the clearing house.—s. 11. See *ante*, p. 438.

The committee will not take cognizance of any bargain done in English stock, &c., for a future account, if it have been effected more than *fourteen days* previously to the day fixed for the adjustment of the existing account; nor of any bargain done in foreign stock, shares, &c., for a future account, if it have been effected for any period beyond the end of the ensuing two accounts.—s. 12.

The *premium or discount* of any loan (although such loan consist of but one kind of stock) is calculated upon the principal sum subscribed, and not upon the stock produced by the subscription.—s. 13.

No bargains made in any loan, *previously to the contract for the same*, are attended to by the committee.—s. 14.

An offer to buy or sell a sum of stock, or other securities, *at a price named*, is binding upon the party making such offer as to any part thereof.—s. 15.

No application, which has for its object the *annulling of any bargain* in the Stock Exchange, is attended to by the committee, *unless upon a specific allegation of fraud*.—s. 16.

On each of the four days pre-

All bargains made on the Stock Exchange are checked the following day by the parties themselves or their

ceding the account, and on the account day, the clerk of the house *fixes the making-up price of Consols*, by taking the average price between ten and a quarter before four o'clock on each of such four days, and between ten and a quarter before one o'clock on the account day. In like manner, the clerk of the foreign market, at twelve o'clock on each of the two days preceding each foreign settling, fixes the making-up prices of all foreign stocks, by taking the then actual market prices. He makes out a quotation of the same, and no making up is binding unless at such fixed prices.—s. 17.

Every member who may have bought foreign stock of another for a particular day, which stock shall not have been delivered to him at or before *half-past two o'clock* on the day on which it was contracted to deliver the said stock, has a right to re-purchase the same, through the medium of a broker, at *three o'clock* on the same day; and to claim of such seller any loss or charge which may have been incurred thereby. All such purchases to be made publicly.—s. 18.

Every member who may have sold *foreign stock* for a particular day, and which stock the buyer is not prepared to pay for by *half-past two o'clock* on the day upon which it was contracted to take the said stock, has a right to re-sell the same, through the medium of a broker, at *three o'clock* on the same day; and to claim of such buyer any loss or charge which may have been in-

curred thereby. Such sale to be made publicly.—s. 19.

Every member intending to demand bank notes in payment for *foreign stock*, without having made such an agreement at the time of entering into the contract, must give notice of his intention to the party, at or before *eleven o'clock*.—s. 20.

An offer to buy or sell a sum of *foreign stock*, at a price named, is binding upon the party making such offer, as to any part thereof, not less than the under-mentioned sums, viz.—

£1,000 stock or scrip.

Fr. 1,000 French Rentes.

250 Ducats Neapolitan Rentes.

£1,036 Russian stock, or any other foreign security representing about £1,000 stock.—s. 21.

Every bond is considered perfect, unless a material part of the wording be obliterated, or it be much torn or damaged; and if any dispute arise on such points, it is left to arbitration.—s. 22.

No bonds can be returned on account of imperfection, if kept a longer period than *three days* from the day of delivery, unless it can be proved that the party passing the bond was aware of its being imperfect.—s. 23.

The committee do not sanction, or take any cognizance whatever of bargains made in *new bonds* or stock, or any other securities, issued by any foreign government that has not duly paid the dividends on former loans raised in this country,

clerks, by calling over their respective books, one against another. There are eight account days in the year when

unless that government shall have effected some satisfactory arrangement with the holders of such stock or bonds, or other securities, on which the dividends have been left in arrear.—s. 24.

In all bargains in exchequer bills, it is presumed that the parties contract for bills which are not filled up *to order*, unless otherwise expressed by the seller at the time of making the contract.—s. 25.

All bargains made in English or foreign stocks, when no time is specified, are considered as being made for money.—s. 26.

REGULATIONS AS TO BARGAINS IN SHARES.

1. Every member who has given his name to pay for transferable shares, must pay the *ad valorem* duty, together with the fees attending the conveyance of the same; always excepting the shares of old-established companies, the stamps and fees of which may be proved to the satisfaction of the committee, from long usage, to have been paid by the seller.

The buyer is required to state on the ticket the way in which he may desire to have his shares transferred; and in those companies where the expense of conveyance falls upon the seller, the buyer must pay any increased expense caused by such division of transfer; and in companies where the expense of conveyance falls upon the buyer, the seller must, in like manner, pay any increased expense incurred for his accommodation.

2. All bargains in shares, when no time is specified, are considered to be made for the current account.

3. When bargains have been made in shares, and previous to their completion, the holder of such shares, by virtue of such holding, becomes entitled to a proportion of new shares, it is competent to the buyer to give notice to the seller, that he will complete the bargain forthwith, in order to avail himself of the opportunity of securing the new shares; but if no such notice be given, he is not entitled to them, unless a special contract be made at the time of purchase.

4. When shares are delivered in blank transfer, the committee do not interfere at any subsequent period to cause a name to be given by the purchaser, unless such is expressly stipulated for at the time when the said blank transfers may be received.

5. Every member who has sold shares, is required to cause the same to be transferred at the price marked upon the ticket given to him by the purchaser.

6. Every member who has purchased shares, and passed a ticket for them, is required, in the event of such ticket being divided, to pay for any portion of the shares which may be presented to him for that purpose, provided the transfers are not for smaller amounts of shares than are permitted to be marked in the list of prices; and should he, owing to such subdivision, have paid more for stamps than would otherwise have been the case, he may receive

time bargains between the members are adjusted : these are usually fixed for Thursdays or Fridays. In foreign stock and shares, there are two settling days in the month, which are fixed by the committee.

Every *defaulter* on the Stock Exchange ceases to become a member, until re-admitted by the committee, and his affairs are managed by two persons annually appointed by the latter as official assignees under regulations peculiar to the Stock Exchange(*k*); no such defaulter can be re-admitted until after the lapse of six months, and not then unless he pay from his own resources one third of his losses. A defaulter is, in the phraseology of the Stock Exchange, denominated a "lame duck;" and it would appear that a groundless imputation of being in such a predicament would subject the defamer to an action for any special damage sustained thereby (*l*).

the excess so paid from the party to whom the ticket was originally given. But every member dividing a ticket, must give immediate notice, in writing, to the party who has to pay for the same.

7. Shares not delivered within ten days after the passing of a ticket may be bought in against the seller, provided a notice of such intention be publicly posted in the Stock Exchange, for not less than four days previous to such re-purchase; and all loss incurred thereby must be paid by the seller.

8. Every member having passed a ticket for shares, which are not delivered within twenty-one days, and not availing himself of his right, in consequence of such non-delivery, to buy in the same, is considered as having released the seller from all responsibility, unless it appear that the exercise of such right has been

waived at the seller's request.

9. An offer to buy or sell a number of shares at a price named, is binding upon a party making such offer as to any part thereof, provided that such part and the balance remaining be both marketable quantities.

10. No smaller number of scrip shares than five are permitted to mark in the price list; nor are any number of shares, requiring a transfer, permitted to mark, that shall be sold at less than the market price, owing to the stamp rendering a sacrifice necessary.

11. No person is required to pay for shares presented after three o'clock.

(*k*) Set forth in the printed rules quoted, *ante*, pp. 450, *et seq.*

(*l*) See *Morris v. Langdale*, 2 B. & P. 239.

The regulations of the Stock Exchange are, like other usages of trade, recognized by courts of law as evidence of the course of dealing between the parties to a contract; and therefore the broker being by those regulations looked upon as the principal, if, in pursuance of a legitimate contract entered into by him, he pay differences, or otherwise settle a dispute out of his own pocket, his principal is bound to indemnify him (*m*), as, for instance, where imperfect bonds are sold by mistake for genuine ones (*n*); but if either of the contracting parties should nevertheless elect to take the security of the principal instead of the broker, the former is nevertheless answerable (*o*).

(*m*) See *Child v. Morley*, 8 T. 725.

R. 610; *Sutton v. Tatham*, 10 Ad. & E. 27; 2 P. & D. 308.

(*o*) See *ante*, p. 430; and *Mortimer v. McCallam*, 6 M. & W. 58;

(*n*) *Young v. Cole*, 3 Bingh. N. C. 7 M. & W. 20.

CHAPTER XXVII.

THE SHIPPING AND INSURANCE REGULATIONS
IN LONDON.

THE routine of the law and practice relating to shipping and insurance being so ably treated of in the masterly production of two modern legal authors, which are accessible to every English reader (*a*), it is quite unnecessary in this place to deviate from the design we have uniformly had in view,—to describe the *peculiar* usages and regulations of the City of London.

The persons connected with the shipping interest in London are, as elsewhere, the ship-owners, the merchants, and the underwriters or insurers; and under them, as in other departments of trade, the important class of middlemen called brokers (*b*). The duty of the *ship-broker* is to buy and sell ships for others, to procure cargoes for ships, to forward goods on their arrival to the consignees, and to obtain payment of the freights for the ship-owners (*c*), and for this he is remunerated, like other brokers, by a commission or per centage upon the amount received by his employer. The ship-broker's commission is £5 per cent. on the freight, unless there be a special agreement, or the ship be chartered upon a tender (*d*); and the usage is, that when a broker has introduced the captain of a ship and a merchant together, and they by his means enter into some negotiation as to the intended voyage, the broker is entitled to his commis-

(*a*) See Lord Tenterden's *Law of Merchant Ships*, by Mr. Serjeant Shee, 8vo., Lond. 1840, and Mr. Justice J. A. Parke's *Law of Insurance*.

(*b*) *Ante*, p. 416.

(*c*) See *Pott v. Turner*, 6 Bingh. 702, where a ship-broker was in consequence declared subject to the bankrupt laws.

(*d*) *Browne v. Nairne*, 9 C. & P. 204.

sion if a charterparty be ultimately effected between them for that voyage, even though another broker may be subsequently employed to write the charterparty, or they do it themselves (e). On the other hand, no commission appears to be payable by the ship-owner if the contract goes off by the owner refusing to complete it, even though no reasonable cause be assigned for such refusal (f).

The duty of the insurance-broker is to negotiate between the merchant or ship-owner and the underwriter the terms of insurance of goods or vessels at sea, his remuneration being also by way of commission upon the premium which is paid (g); and insurance at this day being so generally and uniformly adopted, the interests of the two classes of ship-owners and assurers are become in a great degree identified, and in this city are protected in a peculiar manner by the joint co-operation of these two classes, which so essentially conduces to the advancement of our commercial interests, and to secure to this great city much of that pre-eminence it at present enjoys.

The Lombards, whom we have before mentioned as the ancient capitalists and bankers of London (h), seem to have been the first to introduce the system of marine insurance into this country (i); and on building the Royal Exchange a public office was established there for the purpose of carrying on the system on the plan which they introduced (k); and the modern form of the policy of insurance still has the formal words in it, that it "shall be of as much force and effect as the surest policy of

(e) *Burnett v. Bouch*, 9 C. & P. 620.

(f) *Broad v. Thomas*, 7 Bingh. 99; *Read v. Ram*, 10 B. & C. 438.

(g) See *post*, p. 461.

(h) *Ante*, p. 415.

(i) *And. Hist. of Com.* vol. 1, p. 454.

(k) See recital of stat. 43 Eliz. c. 12, which created a court for determining controversies concerning policies of insurance effected there, and which is still unrepealed, but not extending to other cases, is gone into disuse; see 4 Inst. 250, and *And. Hist. of Com.* vol. 1, p. 454.

assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in London" (l).

By the 6 Geo. I. c. 18, passed in order to remedy the inconvenience arising from the insecurity of private underwriters (150 of whom are said to have failed about the time of passing that statute (m)), the king was empowered to erect two chartered companies for insuring ships, and lending money on bottomry, with a monopoly against all but individual underwriters, in pursuance of which the *Royal Exchange* and *London Assurance Companies* were established, whose monopoly remained until the year 1824, when the above statute was repealed by the 5 Geo. IV. c. 114; and the business of insurance in this city is now carried on both by private underwriters and public companies.

The Insurance Market or Exchange in London is at a subscription room in Threadneedle Street (n), called "Lloyd's," after the coffee-house where the underwriters formerly met, and belonging to a society consisting of merchants, bankers, traders, and underwriters, in all about 1,200, from whom are chosen a committee of nine, with proper officers under them, for the management of the affairs of the society; and authorized agents are appointed, in all the principal ports in the world, who forward regular accounts of the departures from, and arrivals at, their respective ports, as well as of losses, and other casualties, and any other information likely to be of importance to the body of subscribers; and these accounts are regularly filed, and printed in a journal called "Lloyd's List;" which is kept, properly indexed, in a room adjoining the place of meeting, for the subscribers' use. The principal arrivals and losses are, besides, posted in two books, placed in two conspicuous parts of

(l) See the form in Park on Insurance, vol. 1, p. 30; Smith's Mercantile Law; and M'Culloch's Com. Dict. tit. Insurance.

(m) And. Hist. of Com. vol. 1, p. 290.

(n) During the rebuilding of the Royal Exchange.

the large room, and also in the Captains' Room (*o*), for the use of the public at large; the statements contained in these books of the loss or capture or arrival of vessels, &c. are sufficient evidence of notice to the underwriters and other frequenters of Lloyd's, who may be reasonably presumed to have seen them (*p*).

In the Captains' Room, which has been now for a short period separated (*q*) from the principal place of meeting, the masters of vessels, ship-brokers, and others interested in shipping, meet, in order to obtain and receive information, and negotiate the terms of freight and sale or hire of vessels, &c.

To afford greater facility of information to the shipping interest, a book called "Lloyd's Register," containing a complete classification of the merchant ships of the United Kingdom, and of the foreign vessels resorting here, is annually printed, under the superintendence of a committee of twenty-four persons, chosen respectively by the committee for managing the affairs at Lloyd's, and the committee of a society called the *Ship-owners' Society*, and from time to time altered and corrected by means of moveable types, as occasion requires.

The principal ship-owners are naturally interested in having their ships duly classified in this register, as it publishes to the world an authentic character of them, which could not otherwise be done, and without a ship being entered therein, considerable difficulty is experienced in effecting an insurance upon it. In order to get a ship registered at Lloyd's, officers belonging to the society, called surveyors, are appointed at the principal ports in the United Kingdom, upon whose report the classification of every vessel is determined on (*r*), and the same is then

(*o*) *Infra*, note (*g*).

(*p*) *Abel v. Potts*, 3 Esp. N. P. C. 242; *Bain v. Case*, 3 C. & P. 496.

(*q*) The Captains' Room is at the

old London Tavern, Bishopsgate Street.

(*r*) By a sub-committee called the Classification Committee.

entered in the list as given in the form below, and a certificate signed by the chairman and secretary of the society is furnished to the master or owner of the vessel of such classification, as a voucher to the public of her being sea-worthy.

Lloyd's Register has of late years been repeatedly brought before the notice of our courts of law; and though it is not admitted as evidence there of the state of a vessel which it describes, or even to show the general opinion of persons connected with shipping respecting such vessel (s); yet, on the same principle as that adopted with respect to Lloyd's List (t), it is presumed that the classification of a vessel in this book would be considered sufficient notice of her state of repair, to those among whom it is circulated; and Lloyd's Register is regarded as being so far a public undertaking, that a *bonâ fide* classification therein of any vessel has been held to be justifiable, however prejudicial it may be to the interests of the owner (u).

Lloyd's rooms are open from 10 till 5; the greater part of the business, however, is transacted between 1

(s) *Freeman v. Baker*, 5 Car. & P. 482.

(u) *Kerr v. Shedden*, 4 C. & P. 531.

(t) *Ante*, p. 459.

| No. | Ships. | Masters. | Tons | Build. | | Owners. | Port belonging to. | Destined Voyage. | Classification. | | |
|-----|--------------|-----------|------|---------|------|------------|--------------------|------------------|-----------------------------|--------------------------------|-------|
| | | | | Where | When | | | | No. of Years first assigned | Character for Hull and Stores. | |
| 1 | Abberton S.* | J. Catt | 451 | Ipswich | 1819 | Godwin | London | Lon. Sydney | — | A 1 | |
| 2 | F. & C. 40.† | J. Harris | 42 | Neath | 1836 | Srprs. 40† | Neath | Rest. 35 - | 8 | 11 | |
| | Abess Sp.* | J. Barron | 158 | Jersey | 1837 | Tregilles | | Sws. Wtrfrd. | 10 | A 1 | |
| 10 | Alcona Bg.* | | | | | H. Wilson | Prtferry | Sws. Cardiff | — | 13 | |
| | | | | | | | | Bel. Medit. | | *Æ | *Æ 1 |
| | | | | | | | | Liv. Genoa | | 38 | 1. 41 |

* Ship. Sloop. Brig.

† Felt and coppered, 1840.

‡ Iron bolts. } Some repairs, 1840.

Vessels marked A are } of the 1st class.
Do. Æ are of the 2nd do.

Do. B are of the 2nd class.

Do. 1 are of the 3rd class.

The stores of vessels are marked by the figures 1 and 2; the 1st, meaning that the vessel is complete; the 2nd, inferior.

and 4, when those merchants and ship-owners who manage their own insurance business produce blank policies, and hand them about from one underwriter to another, until they are subscribed or rejected; but the brokers and underwriters doing business at Lloyd's, being so well known to one another, are enabled to avoid much of the trouble and formality required between strangers in effecting insurances. Many of the insurance-brokers are underwriters themselves, and when directions are received by any member to effect an insurance, it is arranged with great facility among them; for this purpose slips of paper are handed about containing the particulars of the proposed insurance, which are subscribed and entered in the broker's books as actual insurances. The premiums payable to the underwriter, and the amount of the losses when they arise, are made matters of account, and usually settled between the underwriter and broker at the end of the year; the latter being always liable to the underwriter as the principal, and consequently entitled, as against the assured, to recover the amount of the premiums immediately the policy is effected (*x*). The regular profits of the insurance-broker consist of a commission of £5 per cent. deducted from the premiums, £12 per cent. on the general balance due to the underwriter, if any, and $\frac{1}{2}$ per cent. upon each separate amount of losses received (*y*).

The mode of effecting insurances with the companies differs very little from the above, but the intervention of a broker is very often dispensed with. A note of the particulars of the proposed insurance is sent to the office selected, and on the amount of premium being agreed on, a memorandum is signed, operating in the place of a formal policy until the latter is drawn out, which is generally done in four or five days. The allowance of £5 per cent.

(*x*) *Power v. Butcher*, 5 M. & R. 327; and see *Barchard v. Forrester*, 4 Taunt. 541 n.

(*y*) *M'Culloch's Com. Dict.* tit. Insurance.

is deducted from the amount of the premium, in favour of the principal, and certain other allowances are made to the latter, which differ in the various offices.

The custom at Lloyd's allows of one month's time being given to the underwriter to pay losses, and another month to the broker to collect the money; but both there and at the insurance offices it is now usual to pay the same immediately; and even when the vessel has not been heard of, and the strict rule allows the underwriter a twelvemonth's time to pay the loss, it is the common practice to adjust the same after a much shorter time has elapsed.

CHAPTER XXVIII.

COMMERCIAL SALES.

BESIDES the system of selling through the intervention of brokers on the Royal Exchange (*a*), it has become the practice in London, since the establishment of the docks (*b*), to dispose of a great part of the warehoused goods by public auction, in nearly the same mode as that formerly adopted by the East India Company (*c*).

The persons employed in these sales are generally brokers (*d*), though their right to conduct such sales does not accrue to them in their capacity of brokers, but rather in that of auctioneers, for which reason the brokers employed in these sales are always invested with an auctioneer's licence (*e*). The principal place in London for the sale of colonial produce is Mincing Lane, where a sort of market or exchange for that branch of trade is held every day in a building denominated "The Commercial Sale Rooms;" but public commercial sales also take place at the different brokers' rooms, and at *Garraway's*, and for Russia produce at the Baltic Coffee-house.

As soon as the owner of goods in the docks has made up his mind to sell them, orders are usually given to a broker for that purpose; and if they are to be submitted

(*a*) See *ante*, p. 427.

(*b*) *Id. ib.* p. 366.

(*c*) At the public commercial sales of the East India Company, the ancient mode was formerly adopted of selling by an inch of candle, which being lighted served to limit the period for bidding. See *Malyne's Lex Mercat.* These

sales always took place before the chairman and directors. The goods which the company have had to dispose of, since the renewal of their charter, have been sold like the goods of private individuals.

(*d*) See *ante*, p. 427.

(*e*) *Id. ib.* p. 419; *Wilkes v. Ellis*, 2 H. Bl. 555.

to public sale, the goods are entered by the broker, in lots (*f*), in a catalogue, with the terms or conditions of sale, which are printed and circulated in the trade.

The conditions at these public sales slightly vary in the different trades, but the following, which are usually adopted in the East India piece goods trade, though considered somewhat over stringent in their provisions, serve as an example, *viz.*—

“ CONDITIONS OF SALE.

“ I. The highest bidder to be the purchaser, and if any dispute arise, it is to be decided by a show of hands, or left to the decision of the selling broker.

“ II. The buyers of goods at this sale are to pay all duties of customs or excise (*g*), which have been, or may be imposed upon the same by any act or acts of parliament, auction duty excepted, which, in cases where due, will be paid by the sellers.

“ III. All brokers who shall buy at this sale, are to take notice that they are, within three days after the conclusion of the sale, to declare, in writing, their principals, with their places of abode; and all brokers who shall buy for persons in the country or abroad, shall, at the time they declare their principals, produce their orders for the same, together with the undertaking of a resident known agent in London, to make good the contract. Should any broker neglect to declare his principal in the manner above-mentioned, or buy for persons under age, he shall be esteemed the principal, and shall himself be obliged to pay for the goods so bought by him (*h*).

“ IV. Every person, whether broker, agent, or principal, who shall be declared to be the best bidder for any lot or lots of goods at this sale, shall make such deposits as are expressed in the catalogue on [*usually a few days after the sale,*] (or immediately after the sale of any lot, if required, in default of which the lot to be put up again), and shall make good the remainder of the purchase-money, on delivery of the warrants, on or before the *prompt day*, which is always fixed (*i*), without discount.

“ V. In case any buyer or buyers of goods shall make default in payment of his or their deposits, the goods shall be, as soon after as convenient, resold, either by public auction or private contract, at the option of the selling

(*f*) *Ante*, p. 376.

(*g*) This is ordinarily the case in sales of goods in bond, but some articles, as sugars and hides for instance, are ordinarily sold duty paid.

(*h*) See *ante*, p. 430. This condition is not usually enforced, where the credit of the purchasing broker

is unquestionable.

(*i*) The *prompt day*, or day for payment on sales of goods not payable by bill, differs in various trades. In sugars and tobacco it is 2 months, and in others, only 14 days from the day of sale. See *post*, p. 468.

brokers, and the difference in price, if any, and expenses, shall be made good by the first purchaser.

"VI. In case any buyer shall not make good the remainder of the purchase-money on the goods which shall be bought by him at this sale on or before the prompt day, viz. ———, the goods shall be, as soon after as convenient, re-sold, either by public auction or private contract, at the option of the selling brokers; and all losses, charges, interest of money, or any other damage whatever that may occur, shall be made good by the defaulter, and for which he will be liable to be sued.

"VII. In all cases where the goods have been exposed to public view, so as to have afforded opportunity for the purchasers to have exercised their own judgment, no allowance whatever will be made, nor will the purchasers be permitted to relinquish, on any pretence, any lot or lots they may have bought.

"VIII. No allowance will be made upon any goods, by reason of damage or otherwise, that shall remain in the warehouses after the prompt day. The buyers shall have the liberty to have the packages opened, at their own charge, previous to the prompt day; and if any goods be damaged, (unless so described in the catalogue,) or any pieces be wanting, the buyers shall have and accept such allowance as two or more brokers shall deem reasonable; but no allowance, on any pretence whatever, will be made on any goods bought at this sale, after the same shall have been taken away.

"IX. All goods which shall be bought at this sale, shall remain and be considered at the risk of the sellers, until the prompt day, unless previously paid for.

"X. The buyers are to pay lot money, as customary to the selling broker, on every lot, whether bought at or after the sale, until the prompt day.

"XI. The buyers are to pay warehouse rent for every lot of goods that shall remain in the warehouses after the prompt day; also all delivery and packing charges, according to the rates of the several dock companies in whose warehouses the same may respectively be lying."

A copy of the conditions of sale pasted on the broker's or auctioneer's box is a sufficient notice to bind all parties, though they are not otherwise communicated to the bidder(k); and declarations of the broker or auctioneer contrary to such printed conditions of sale are not admissible in evidence(l). The writing down the purchaser's

(k) *Mesnard v. Aldridge*, 3 Esp. 271. A copy of the conditions of sale must, it seems, be annexed to the catalogue, signed by the broker or auctioneer; see *Kenworthy v. Scholefield*, 2 B. & C. 945.

(l) *Gunnis v. Erhart*, 1 H. Bl. 289; *Jenkinson v. Pepys*, cited *Higginson v. Clowes*, 15 Ves. 516; *Clowes v. Higginson*, 1 Ves. & B. 524; *Winch v. Winchester*, *id. ib.* 378; *Ogilvie v. Foljambe*, 3 Meri-

name by the broker, or auctioneer (*l*), or his clerk (*m*), in the catalogue opposite the lot for which he has bid, binds both parties within the provisions of the statute of frauds (*n*); but the bidder may always retract his bidding before the hammer is down, because the assent of the seller is not signified till that takes place (*o*); and it has been considered that the bidding may be even retracted before the memorandum is made in the broker's book (*p*).

At some sales, as in those of wool, sugar, and other articles, samples drawn from the bulk of the goods in the docks (*q*) are exhibited by the broker to the bidders, at the time of sale, but in other cases the goods themselves are previously inspected in bulk at the docks, and nothing is produced in the sale rooms at all. In the former instance it is a well established rule that the sample must agree with the bulk, or the sale is void (*r*); but it is very usual in such cases for an allowance to be made for the difference in value, particularly where, as in the case of perishable goods, the inferiority of the bulk of the goods has arisen since the sample was drawn; and when the goods themselves have been previously inspected by the buyer in bulk, it is presumed that no allowance need be made at all. The acceptance of the samples by a bidder is a sufficient part delivery within the statute of frauds, even without any memorandum being made by the broker (*s*).

vale, 53; *Shelton v. Livius*, 2 C. & J. 416; *Bradshaw v. Bennett*, 5 Car. & P. 48.

(*l*) *Saunderson v. Jackson*, 2 B. & P. 238; *Egerton v. Matthews*, 6 East, 307; *Champion v. Plummer*, 1 N. R. 252; *Hinde v. Whitehouse*, 1 East, 558; *Phillimore v. Barry*, 1 Campb. 513.

(*m*) *Bird v. Boulter*, 4 B. & Ad. 443.

(*n*) 29 Car. II. c. 3, s. 27; *ante*,

p. 428.

(*o*) *Payne v. Cave*, 3 T. R. 148.

(*p*) *Smith's Mer. Law*, 1st ed. p. 302; see *Farmer v. Robinson*, cited in note to 2 Campb. 339; and *ante*, p. 430.

(*q*) See *ante*, p. 376.

(*r*) *Hibbert v. Shee and another*, 1 Campb. 113.

(*s*) *Hinde v. Whitehouse*, 7 East, 558; *Kilnits v. Surrey*, 5 Esp. 267.

On the sale of those goods which are usually weighed in the docks, as soon as the deposit money required by the conditions of sale (t) is paid, the broker delivers to the buyer the dock company's *weight note* (u), of which a form is given below,* and by the indorsements on which it will be seen that such instruments are negotiable, like dock warrants (x), until the expiration of the day of prompt, when they are exchanged for the latter, and the remainder of the purchase money paid; but this rule is subject to variation in different trades, the usages of

(t) See *ante*, p. 464.

(x) See *ante*, p. 377.

(u) *Id. ib.* p. 376.

* FORM OF WEIGHT NOTE.

" East and West India Dock Company.

739.

Weight Note.

Indigo Warehouse.

Sale Lot, 13,816.

No. 2,000.

Dock Lot

Ship's Rotation, 4¹/₂

Weighed the following, one Chest of Indigo, imported in the ship

from

Captain

Entered by on the

of

1841, subject

to the Management Rate.

Rent payable from the

of

1842.

| Mark. | No. | Cwt. | qrs. | lbs. | | Samples drawn. | |
|------------------------|-----|------|------|------|---------------------------------------------------|----------------|-----------------|
| C D Invoice No. 500 | 20 | 5 | 0 | 0 | Gross | lbs. | |
| | | | 3 | — | Tare | 2 | 1 Nov. 1841. |
| | | | | | Nett for duty, less weight of samples drawn | | |

Examined and Entered, in Cargo Ledger 35, folio 60.
15th of December, 1841.

J. Smith.

N.B.—For the conditions under which the holders of this weight note will be entitled to the delivery of the goods, see the contract on the other side.

H H 2

CHAPTER XXIX.

THE CORN EXCHANGE.

THE direct control of the municipal body over the corn and coal trades has continued longer than over any other branch of commerce, and this principally through the circumstance of their right to the metage of those articles of merchandize (*a*). By an ancient custom those corn factors or dealers who are free of the city are exempt from the payment of the city dues of groundage and water baillage on corn consigned to them in the port of London (*b*); the corn is, however, nevertheless regularly measured by the meters, and the city duty indiscriminately collected, but afterwards returned to such corn factors as are free of the city (*c*). The expense of metage is usually divided equally between the buyer and seller, but there is an exception in favour of the Kent and Essex sellers, who only pay one third of the expense (*d*).

The corn brought into the port of London was in former times principally supplied from the counties of Kent and Essex, and was brought up and exposed for sale in sacks at Bear Wharf, now called Brewer's Quay, in Thames Street. The Kentish men were in the habit of returning home directly after market, while the Essex men used to assemble at an inn in Whitechapel, and having small parcels of grain left on hand, at first entrusted them to a waiter, and afterwards to other persons, to sell as factors for the owners, and this gave rise to the establishment of the old Corn Exchange, and the system of factorage at present in use (*e*).

(*a*) See *ante*, pp. 393, 396, 397.

(*d*) See *post*, p. 470.

(*b*) *Cocksedge v. Fanshaw*, 1 Dougl. 119.

(*e*) Ev. of Mr. Fearnside before Committee on Sale of Corn, 1834, p. 77.

(*c*) 2 Rep. M. C. p. 207.

The Corn Market or Exchange is situated in Mark Lane, and is the property of a joint stock body, to whom certain market dues are paid by the factors and dealers resorting there. There are three market days in the week, *viz.* Mondays, Wednesdays, and Fridays.

It is usual for the farmer to transmit his grain from the different counties, with the exception of Kent, in bulk, on board various sized vessels; but the Kentish grain is brought up generally in sacks, by people called "Kentish hoymen," who have the privilege of selling their grain for ready money on the Corn Exchange, and having stands free of expense, and paying a less proportion of dues for metage, portorage, &c. (f). The wheat of other places is sold nominally for cash, but the custom of the Corn Market is to engraft by parol a credit of one month for wheat, and two months for all other grain (g). The London factor becomes a kind of banker to a great many of the farmers, who are accustomed constantly to consign their grain to him, and the farmer draws as he may require money. The county of Essex enjoys the same exemptions as Kent, as to the payment of metage and portorage; and the custom is said to have originated in the fact that the Kentish and Essex men, at considerable personal risk, even of their lives, supplied the metropolis with grain, during the plague, by bringing it up and selling it at Bear Wharf (h).

The corn factors sell in their own names, and on a *del credere* commission, standing as a sort of middlemen between the principal in the country, and the buyer in London (i), and the latter will not enter into contracts with the corn factor if the name of the principal is dis-

(f) See *post*, *infra*.

(g) *Heisch v. Carrington*, 1 Harr. & Wooll. 306; in the same manner as *prompt* payment in other trades means payment at the expiration of a certain definite period, see *ante*, p. 464.

(h) Ev. of Mr. Fearnside before Committee on Sale of Corn, 1834, p. 77.

(i) *Johnston v. Usborne*, 3 Perry & Dav. 236; 11 Ad. & E. 549; and *Heisch v. Carrington*, *sup*.

closed. No written contracts pass between the buyer and seller unless the corn is out of the port of London, but a ticket or sale note, similar to that copied below,* passes from the factor to the purchaser, stating the quantity sold him, as well as an order for the captain or warehouse-keeper to deliver the quantity purchased.

The grain cannot be delivered without these tickets, (unless of course by private agreement,) without the intervention of a factor, and no transactions are considered complete on the part of the buyer till 10 o'clock on the market day (*k*), after the ticket is signed, before which time he may tender his refusal to the factor (*l*). The certificate of the meter operates, like the dock companies' weight note, as a voucher of the quantity sold or bought (*m*); and the corn factors are usually allowed by the authorities three Mondays' markets before they are obliged to clear a ship in the river (*n*).

The alterations likely so soon to take place in the regulations of importation of foreign corn renders it useless to make any observations upon that subject, and we shall only describe in this place the mode in which the corn returns of the quantities and prices sold are made up in the London market.

All corn factors, agents, or dealers in British corn on

(*k*) See *ante*, p. 470.

(*m*) See *ante*, p. 467.

(*l*) Rep. (H. C.) on Sale of Corn,
1834, Ev. of Mr. Fearnside.

(*n*) Rep. (H. C.) on Coal Trade,
1838, p. 63.

* " Corn Exchange, , 1842.

Sold Messrs. C. & D.

About 1,000 qrs. of wheat, at 50s. per qr., for W. E.

No refusal will be accepted unless sufficient reason be given at my stand before 10 o'clock next market day.

Corn Exchange, , 1842.

The Ship Gray, }
Captn. A. B. } Lying at Brewer's Quay.

Deliver the bearer for Messrs. C. & D. 1,000 qrs. of wheat for W. E."

the Corn Exchange, carrying on business in the City of London, or within five miles of the Royal Exchange, are required by the statute at present in force (o), to make, subscribe, and deliver to the lord mayor, or one of the aldermen, the following declaration in writing :—

"I, A. B., do declare that the returns to be by me made, conformably to an act passed in the 9th year of the reign of King George the 4th, entitled, &c., of the quantities and prices of British corn which henceforth shall be by or for me sold or delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn bona fide sold and delivered by or for me, within the periods to which such returns respectively refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively; and to the best of my judgment the said return shall in all respects be conformable to the provisions of the said act."

A certificate of which declaration the lord mayor, or alderman taking the same, is required to deliver to the inspector of corn returns, appointed by the court of aldermen, under that act to be registered.—s. 13.

Every such corn factor or dealer, under a penalty of £20 per month, is required on every Wednesday to return to the corn inspector a signed account in writing, of the quantities of each respective sort of British corn sold during the week ending on the Tuesday previous, with the prices thereof, and the amount of every parcel, with the total quantity and value of each sort of corn, and by what measure or weight the same was sold, and the names of the buyers thereof, and of the persons for and on behalf of whom such corn was sold; and the inspector of corn returns is empowered to give notice to persons making such returns, to declare and set forth where, and by whom, and in what manner any such British corn was delivered to the purchaser or purchasers—s. 19; and also to require the above declaration from any corn dealers—s. 26; and not to receive returns from any corn dealer until the declaration be made—s. 28. The in-

(o) 9 Geo. IV. c. 60, s. 18.

inspector to enter returns made to him in a book, and to transmit to the comptroller of corn returns a weekly account of the quantities and prices of corn sold, for the purpose of the average prices being made up and published; and the inspectors are required to affix a copy of the last return sent in by them on each market day in the market place.—s. 39.

CHAPTER XXX.

THE COAL TRADE.

THE connection of the civic authorities with the regulation of the London coal trade was occasioned, as we have before observed (*a*), by their exclusive right to the metage. The trade in coal was originally in the exclusive possession of the Woodmongers' Company, whose powers, like those of most of the other ancient guilds, have long lain dormant, and the company itself, indeed, become extinct (*b*); but the great frauds committed by the dealers in this now most necessary article of daily consumption, have always required a more than ordinary vigilance on the part of the civic authorities, and their powers over the trade have been from time to time strengthened by acts of parliament (*c*).

The ancient powers of the lord mayor to fix the assize of fuel (*d*) being wholly ineffectual, the experiment of an open market, and open competition, has been attempted as a substitute for that system of interference between buyer and seller, of which our ancestors were so much enamoured.

The Coal Exchange, in which the principal wholesale transactions in the coal trade take place, is declared to be an open market, and vested in the corporation of London, who have the sole power of continuing, appointing and removing the officers attached thereto, and removing or altering the site of the market, and are empowered, in addition to a duty of 1*s.* per ton in lieu of

(*a*) *Ante*, p. 469.

(*b*) 2 Rep. M. C. 2d pt. p. 342.

(*c*) See 9 Ann. c. 28; 47 Geo. III. sess. 2, c. 68; 57 Geo. III. cc.

1, 40; 9 Geo. IV. c. 65, repealed by 1 & 2 Will. IV. c. LXXVI.

(*d*) 7 Ed. VI. c. 7; and 43 Eliz. c. 14.

metage, &c., to levy an additional duty of one penny per ton on all coals, culm and cinders, entering the port of London, to defray the expenses of the market—1 & 2 Will. IV. c. LXXVI. ss. 3 & 4 (*d*); and the court of aldermen are empowered to regulate the market by by-laws, to be approved and allowed by one or more of the Judges—ss. 32, 33, 34. The right of the corporation to the coal metage is suspended during the operation of the existing statute, and the weighing and measuring entrusted to a body of men chosen by a committee of the trade itself (*e*).

The following may be laid down as the ordinary routine of the business of the London coal trade, according to the established regulations, *viz.* :—

The captain of the collier, upon taking in his cargo at the place of loading, receives a certificate of the kind of coal which he has on board, and another certificate which he has to present at the Custom-house. On his arrival in the port of London, the vessel must be duly entered with the clerk of the coal market, and the above certificates either sent to the factor who has been engaged to dispose of the cargo, in order to pass through the necessary forms for discharging; or if, within ten days after arrival, the captain determine on not breaking bulk, he may give notice thereof to the clerk of the coal market, in the manner pointed out by the act, and on receiving a permit for that purpose, may sail without payment of the duties—1 & 2 Vict. c. CI. s. 11; but he cannot in such case deliver any part of the cargo, under a penalty not exceeding £25—1 & 2 Will. IV. c. LXXVI. s. 70; and provisions are made for registering the quantity and quality of coals brought into the port—ss. 75, 76.

In the London trade, cargoes of coal are usually consigned on a *del credere* commission to the coal factor, who takes upon himself the responsibility of passing the

(*d*) Continued for seven years by (*e*) See *ante*, p. 396.
1 & 2 Vict. c. CI.

cargo through the necessary forms of office, and of collecting and making up the accounts of sales, without detaining the ship, makes advances to the captain, and is ready to be drawn on by the owner for the value (*f*). The forms necessary to be gone through by the factor consist in the payment of the city, Trinity House, and tonnage dues, and the appointment of *meters* to weigh and deliver the cargo. These must be all done, and the vessel discharged within fifteen days from the time of her arrival in the Pool (*g*); and by the regulations of the coal meters' office, the colliers are discharged in rotation, according to the time of their first application at the office; the purchaser, as soon as the terms of sale are agreed upon, lodging at the coal meters' office, the seller's authority to appoint a meter (which is called a *turn paper*); and the regular meter next on the list kept at the office (*h*) is appointed to discharge the cargo. The ship meters' regulations as laid down by the committee, being very minute, are given in the note below (*i*).

(*f*) See Rep. of Select Committee, (H. C.) on Coal Trade, 1838, App. Min. of Ev. p. 87.

(*g*) See *ante*, p. 338.

(*h*) There about 120 regular meters always on duty, 30 extra meters in readiness, and 20 supernumeraries.

(*i*) REGULATIONS TO BE STRICTLY CONFORMED TO BY SHIP METERS.

1. Meters, when unappointed, are to attend at the meters' office, with their accounts, or for re-appointment to ships, daily, (unless absent with leave from the shipping clerk),

At nine o'clock in the morning,
Twelve o'clock at noon,

A quarter-past three in the afternoon;

and provided there is a meters' list, at

A quarter-past six in the evening.

2. Every meter, when appointed to a ship, must attend on board thereof, from seven o'clock in the morning until five o'clock in the evening, during the months of February, March, April, May, June, July, August, September, and October; and from seven o'clock in the morning until four o'clock in the afternoon, during the months of November, December, and January; unless informed by the buyer or his agent that no more coals will be taken on that, or some other particular day.

3. Meters are not to absent themselves from the ship to which they have been appointed, during the hours above mentioned, without leave from the shipping clerk, except in case of illness, of which early notice must be given at the office.

The statutes at present in force (*k*), relating to the coal trade, within 25 miles of the Post Office, apply as well

When leave of absence is obtained, they shall not quit their ship until another meter arrives to relieve them.

4. Meters are empowered to work from sun-rise to sun-set, from the first of March to the thirtieth of September inclusive; and from six o'clock in the morning to five o'clock in the evening, in the months of October and February, if required so to do.

5. Meters shall not depute any other meter or person to do their duty for them; or weigh any coals except from those ships which are entered at the meters' office; or use any other beams, weights, or scales, than those belonging to this office.

6. Meters shall not deliver any coal, culm, or cinders, contrary to the terms of the turn paper delivered to them, unless the consent of the buyer or his agent, whose turn it is to load, according to the said turn paper, shall have been first signified to them in writing; or when leave is given on the turn paper to work out of turn, then the buyer nearest in turn who is ready to go on is entitled to the preference, and when any barge has begun to load out of turn, she may continue to go on for her full quantity; but the buyer next in rotation on the turn paper shall, notwithstanding, be held responsible for any baulked day or days that may occur by reason of such buyer neglecting or refusing to take his coals in the order of rotation on the turn paper, but in no case shall the meter deliver on account of the clearing buyer his coals out of turn within fourteen tons of

the quantity he would be entitled to according to the certificate, and meters shall not permit any coals to be unfairly worked.

7. Meters shall not deliver into any barge, or room of a barge, a less quantity than seven tons, or any other quantity than some multiple of seven tons, unless it be to finish the particular working of some buyer, or to clear the ship. Nor shall they deliver any coals into any room of a barge having coals in it, or into any open barge, unless kept separate from any coals therein, except it be to make up to seven tons, or some multiple thereof, coals of the same name and description as those which they were delivering, the certificate of which shall be shown to them previous to their so doing; and if it shall happen that any lighterman or other person will not permit to be loaded the full quantity of seven tons, or some multiple thereof, then the meter shall not give any certificate for such quantity, not being seven tons, or some multiple of it, except it be to finish a particular working of some buyer, or to make up seven tons, or some multiple thereof, as above provided, or to clear the ship. The above rule not to apply to canal or monkey boats, worked in pairs, for which a special certificate shall be given according to the form posted in the shipping office.

8. Meters are to give certificates gratuitously of all coal, culm, or cinders, delivered in conformity with the preceding regulations, when required so to do; the same to be of office certificates, in which the quantity

(*k*) 1 & 2 Will. IV. c. LXXVI.; 1 & 2 Vict. c. CI.

to wholesale as retail transactions therein. All coals are required to be sold by weight—1 & 2 Will. IV. c.

and the quality of the article delivered, shall be in exact conformity with the short bill and turn paper, except when different sorts of coals are in the same ship and kept separate; then they may be certified by their distinct denomination, and the buyer's name or names shall be set forth in words at length, a complete copy of which shall be entered in the margin of the certificate book; the certificates given by the meters to be witnessed by the master, mate, or other officer in charge of the ship.

9. Meters are in all cases to leave on board ship, unless otherwise directed by the buyer or his agent, the sweepings and way-coals, not exceeding seven and a half hundred weight in quantity. Provided also, that when required by the master or other officer in charge of the ship, the meter shall leave for the ship's use, any quantity of coals, not exceeding ten hundred weight in the whole: the sweepings and way-coals (if any) to form a part thereof, and the coals required over and above the sweepings and way-coals to make up the said quantity of ten hundred weight, to be in all cases a fair sample of the whole cargo, and not picked. The sweepings and way-coals, and the coals so left for the ship's use, not exceeding ten hundred weight, as above, are not to be returned as part of the cargo, but the meters are required to leave a memorandum on board, stating the quantity so left, attested by their signatures, and also to make a memorandum of such quantity at the foot of the long bill. No metage shall be paid for coals so left, nor shall they

be considered as part of the cargoes in reference to any claims for baulk days. Any further quantity of coals left on board, by order from a buyer, over and above the said ten hundred weight, shall be considered as part of the cargo, and charged to the buyer as part of his coals, a certificate for such additional quantity being left on board.

10. (18th Sept. 1838.) Meters leaving coals on board of ship and neglecting to report the same, as hereinbefore mentioned, shall not be entitled to any metage due to them for coals weighed by them out of such ship, and the case shall be otherwise dealt with as the circumstances may require.

11. Every meter, on the delivery of any quantity of coal, culm, or cinders, must immediately make an entry thereof in the book furnished to him from the office, and not in any other book or paper.

12. Meters, when required, must exhibit the turn paper to the master and mate of the ship they are appointed to deliver, and to any person applying for a part of the cargo, and return the same to the office, with their account of the delivery.

13. If any meter be obstructed in the discharge of his duty, he is forthwith to leave the ship, and report the circumstances to the shipping clerk.

14. Every meter shall deliver his short bill at the office, within two hours after the delivery of the cargo of any vessel above Greenwich, and his other papers as soon as possible.

15. Meters are required to keep their certificate and other books and

LXXVI. s. 43; and a penalty of £10 is inflicted for selling one sort of coals for another—s. 45. The restriction

papers (when not in use) locked up in the wallets provided for that purpose, and not to allow strangers to have access to them. Each meter shall apply in person for his certificate book, and be held responsible for the proper use of all the certificates entrusted to his charge, an account of which must be made up at the end of each certificate book, agreeably to the form printed therein, and the old certificate book shall be returned to the office on the clearing of the first ship after all the certificates are used.

16. If any meter shall lose or injure his wallet, another shall be provided by the office at his expense.

17. Meters shall not be engaged in any branch of the coal trade, or be concerned, directly or indirectly, in any public house, wine, spirit, or beer business.

18. Every meter shall diligently, faithfully, and impartially do his duty, favouring neither buyer nor seller; and if any shall be proved to the satisfaction of the committee, to have received either bribe, fee, or reward, he shall be peremptorily dismissed; and if he be proved to have given too much or too little weight, or in any other manner to have misbehaved, he shall be punished at the discretion of the committee, by dismissal, fine, suspension, or reprimand.

19. Every meter shall, if required, make out and deliver to any buyer or buyers, a general bill or account of coals delivered out of any ship or vessel on the account of any such buyer or buyers; and for the making out of each and every such bill or

account, the following rate or charge may be made, and no more:—The sum of three-pence if the quantity specified in the bill or account be less than fifty tons; the sum of six-pence if it be fifty tons and under one hundred tons; the sum of nine-pence if it be one hundred tons and under two hundred tons; and if it be two hundred tons, or any larger quantity, the sum of one shilling.

20. That the meter who clears the ship must state on the front of the short bill, on the factor's note, and on the back of the long bill, full particulars of baulked days and travelling expenses to which himself or any other meter is entitled. Any meter neglecting the same will lose all claim thereto.

21. Meters, when ordered to attend before the committee, or any sub-committee, shall bring with them all books and papers entrusted to their charge belonging to the office.

22. Every meter to deliver to the captain or mate of the ship, to which he is appointed, the printed notice, respecting the ship's responsibility for the proper care of the weights and scales.

I,
having been appointed a Ship Coal
Meter, do hereby promise and de-
clare, that I will conform to the
foregoing regulations, and that I
will strictly obey all other orders
and regulations which may be made
by the committee appointed from
time to time for conducting the busi-
ness of the meters' office.

London,

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Witness,

SUPPLEMENT TO CHAPTER XXX.

COALWHIPPERS.

By the 6 & 7 Vict. c. CI., intituled, "An Act for establishing an Office for the Benefit of Coalwhippers of the Port of London; and for staying certain Actions in respect of Fitters Certificates," the lords of the committee of privy council for trade are empowered to appoint four commissioners, and from time to time to fill up vacancies.—s. 1.

And for the common council of London to appoint four other commissioners to fill up vacancies.—s. 2.

Who with the chairman of the committee of the General Ship Owners Society of London for the time being, are constituted commissioners for carrying the act in execution, and shall be styled "Commissioners for the Registration and Regulation of Coalwhippers in the Port of London."—s. 3.

Which commissioners, or any three of them, shall meet in the first instance at such time and place as the nine commissioners, or the greater number of them, shall direct, by notice in writing signed by the greater number of the said commissioners; and such meeting shall be called a *Board of Commissioners*; and all future boards of the said commissioners shall be held from time to time at such time and place and upon such notice as may be resolved upon by rules or regulations of any board for that purpose: Provided always, that every board of commissioners shall consist of not less than three commissioners.—s. 4.

The chairman and vice-chairman to be appointed every year; and the chairman to have a casting vote.—s. 5.

H H *

The powers of commissioners being vested in the board.
—s. 6.

The proceedings of board to be entered in books.—
s. 7.

The commissioners to sue and be sued in the name of the registrar.—s. 8.

Coalwhippers Register.—On or immediately after the first day of January, 1844, the commissioners are required to provide and open at some convenient place or places in the city of London or on the banks of that part of the river Thames which for the purposes of this act is to be deemed within the port of London, one or more book or books for the registering of coalwhippers in the port of London, and also to appoint some fit and proper person to be the registrar thereof, with such salary or remuneration, not exceeding £400 per annum, as they may think reasonable, and to regulate the duties of the office of registrar, and as the lords of the said committee of privy council may approve, and to supply any vacancy in the said office caused by death, resignation, or by such removal as hereinafter is mentioned, or otherwise; and the said commissioners are required, immediately upon the opening of such register, to give notice thereof by advertisement inserted in the *London Gazette* for two consecutive weeks, and by bills or placards affixed in some conspicuous places in the Coal Market and Customhouse of the city of London, and in the respective Customhouses at Gravesend, Newcastle, Sunderland, Stockton-on-Tees, and Leith, and at such other places and in such other manner as to them shall seem fit; and in such notice the day on which such register is to be opened, the place where the same is to be kept, and the hours of attendance thereat, shall be specified, and a requisition or warning shall be inserted, to persons desirous of following or continuing to follow the employment of coalwhippers, to have themselves registered under this act; and on the day so specified in such notice, such register

shall be and be deemed to be opened for the purposes of this act.—s. 9.

That the registrar so appointed shall, from time to time, upon such application, and upon payment of such fee (not exceeding 4d.) as shall be prescribed in that behalf under the authority of this act, enter in the said register the Christian name and surname, the age, and the place of abode, and any other particulars required under the authority of this act, of any person who at the time of the passing of this act shall follow the employment of a coalwhipper, and who shall at the time of such application be desirous of continuing therein, and of any other able-bodied male person whatever who shall be desirous of entering on the said employment; and immediately upon such entry being made, the said registrar shall, without any further fee or reward, deliver to every person so registered a *certificate* of such entry having been made, and of the number, date, and particulars thereof; and the said registrar shall from time to time, upon payment of such fee as shall be prescribed and in such cases as shall be mentioned in that behalf respectively, under the authority of this act, renew such certificate; and the said registrar shall at all times and in all respects keep the said register in accordance with the provisions and the regulations to be established under the authority of this act.—s. 10.

In all courts and before any justices of the peace, and upon all occasions whatever, the entries made or contained in such register shall be received as evidence, and be deemed sufficient proof of all matters and things therein registered or contained, without any further proof than the production of such register, and any person shall be at liberty to inspect any such register, during the hours of attendance at the office, without payment of any fee or reward; and the entries in such register, and the certificates to be delivered under this act, shall not be liable to any stamp duty; and if any person

applying to be registered under this act, or procuring or attempting to procure any such certificate, shall make or cause to be made any false representation in regard to his name, age, or place of abode, or if he shall not truly answer all questions which shall be demanded of him in relation to such application or certificate, every person so offending shall forfeit for every such offence any sum not exceeding 20s. ; and if any person or persons shall forge, counterfeit or falsify, or cause or procure to be forged, counterfeited, or falsified, or act or assist in forging, counterfeiting, or falsifying, any entry or certificate of register to be made or given in pursuance of this act, the person or persons so offending, and being thereof lawfully convicted, shall be deemed guilty of a misdemeanor, and shall be liable to be punished by fine or imprisonment, or by both, such imprisonment to be in the common gaol or house of correction, and either with or without hard labour, as the court shall think fit ; and it shall be lawful for any person to detain any such certificate, and for any peace officer to seize and take away any such certificate, in order that the same may be produced in evidence against the offender, or be disposed of as the said registrar shall think proper.—s. 11.

Unregistered Coalwhippers.—After the expiration of one calendar month from the day on which such register shall have been opened it shall not be lawful for any person, except such persons and in such cases as is in this act provided, to follow or exercise the employment of a coalwhipper, or to labour in the discharge, by the process of whipping, of the cargo of any vessels laden with coals in the port of London unless such person shall be registered as a coalwhipper, and shall have a certificate under this act, and then remaining in force ; and if any person not so registered, or not having such certificate, except as last aforesaid, shall follow or exercise the said employment, or shall labour as aforesaid, he shall for every such offence forfeit any sum not exceeding

£2: Provided always, nevertheless, that it shall be lawful for any person or persons, being actually part of the crew of any vessel in the port of London, to labour in the discharge of coals by whipping or otherwise from the same or any other vessel, and also for the actual servants or labourers of the *bonâ fide* owner or purchaser of the cargo of any vessel laden with coals, or of any part thereof, such servants and labourers having been *bonâ fide* engaged in the service of such owner or purchaser for a period of not less than fourteen days, to labour in the discharge of such cargo by the process of whipping, and also for the actual servants or labourers of the several dock companies having docks near to the river Thames, such servants and labourers having been *bonâ fide* engaged in the service of such respective companies for a period of not less than fourteen days, to labour in the discharge of coal by the process of whipping from any vessels in the docks of such companies respectively, and such crews, servants, and labourers may so labour with or without the aid of one or more persons being registered coalwhippers.—s. 12.

Coalwhippers Office.—The corporation of London may hire lands and buildings for offices and stations, at request of commissioners, for the coalwhippers office; maintain such buildings, &c., and at request of commissioners may remove stations.—s. 13. The said commissioners shall provide and keep from time to time such stages, planks, gins, baskets, shovels, and other tackle and implements as are commonly used in the discharge of cargoes of coals, and of such description and in such quantities as they shall think sufficient, and supply to such ships as may require the same such tackle and implements, upon payment of such sum for the use thereof as may be fixed by the said commissioners, not exceeding in any case the sum of 7*s.* 6*d.* per cargo when the vessel is of 250 tons burden or upwards, and not exceeding 5*s.* per cargo when the vessel is of less burden than 250 tons;

and if any person whomsoever shall let out to hire, or for any recompence or reward permit to be used, for the discharge of the coals from any vessel by registered coalwhippers engaged from the coalwhippers office under this act, any tackle or implements to or by any person or persons (except on behalf of the coalwhippers office), every person so hiring out or permitting to be used any such tackle or implements shall for each and every occasion of hiring out or permitting to be used the same forfeit the sum of £5: Provided, nevertheless, that nothing herein contained shall prevent the master of any vessel laden with coals in the port of London from using such of the aforesaid tackle and implements as may be required and as may belong to the owner of such vessel, notwithstanding the cargo of such vessel shall be discharged by coalwhippers engaged from the coalwhippers office, or shall prevent any such master from hiring, or any person whomsoever from letting out to hire, any such tackle or implements as aforesaid, in any case in which such vessel shall be lawfully unladen, according to the provisions of this act, by persons not being registered coalwhippers.—s. 14.

For the purpose of providing and fitting up offices and stations for coalwhippers under this act the common council may borrow or raise, on the credit of the duty of one penny per ton on coals, cinders, and culm imposed by the 1 & 2 Will. IV. c. 76, any sum or sums of money not exceeding in the whole the sum of £1000, in addition to the sums required for the purposes of that act, and thereby authorized to be raised, and upon payment of any monies so borrowed into the chamber of the said city shall cause a security or securities to be given for repayment thereof, with such lawful interest thereon as shall be agreed upon with the lender or lenders thereof; and all securities under this act shall be given in the same manner, and shall be of the same obligation and effect, and shall be assignable in such manner, and shall be entered in such book or books, and shall be liable to be

paid off on such notice, as are respectively specified and declared in the 1 & 2 Will. IV. c. 76, ss. 25, 26, 27, 28, with respect to the securities under that act; and the said duty shall be and the same is hereby charged with the interest which shall be payable in respect of the sum or sums of money to be borrowed under this act, and then with such principal sum or sums: Provided always, that nothing in this act contained shall continue the said duty of one penny per ton after the yearly dividends and interest of the stocks, funds, and securities purchased with the proceeds of the said duty shall be sufficient for the purposes authorized by the said recited acts, or would have been so sufficient if no sum of money had been charged thereon by virtue of this act.

Commissioners to appoint Officers.—The said commissioners to appoint such and so many branch registrars, clerks, and other officers and servants as they may think necessary for carrying this act into execution, with such salaries and allowances as they may think reasonable, and as the said lords of the said committee shall approve, and to supply vacancies among them caused by such removal as hereinafter is mentioned, or by death, resignation, or otherwise: Provided always, that it shall be lawful for the lords of the said committee of her Majesty's privy council from time to time to remove the registrar, branch registrars, clerks, and other officers and servants appointed by the said commissioners by virtue of this act, and any person so removed shall not be afterwards appointed to any office or situation under this act without the consent of the lords of the said committee.—s. 16.

The said commissioners shall and they are hereby required, as soon as they shall deem the arrangements for the said offices to be sufficiently advanced and proceeded in, to give notice for the like period and in the like mode as is hereinbefore prescribed with respect to the register hereinbefore directed, of the establishment of the coal-

whippers office under this act, and at the time fixed for that purpose in such notice such office shall be and shall be deemed to be established under and for the purposes of this act.—s. 17.

Coalwhippers.—And whereas, in order to secure the objects of this act, it is expedient to make certain provisions respecting the discharge of the cargoes of vessels laden with coals in the port of London; be it therefore enacted, That after the establishment of the coalwhippers office under this act the master or mate of every vessel laden with coals, the whole or part of the cargo whereof it shall be intended to discharge in the port of London by coalwhippers, or some other person on behalf of the master, shall make application to the head office or the nearest branch office of coalwhippers, stating the quantity of coals, and the time at which he desires that the discharge of such coals shall commence, and, if he shall so think fit, the time within which it shall be completed, and the rate per ton which he agrees to pay for the discharge thereof.—s. 18.

Appointment and Hire of Coalwhippers.—The clerk or other appointed officer of the coalwhippers office under this act, upon every such application for coalwhippers as aforesaid, shall forthwith give notice of the application to the gangs of coalwhippers in attendance at the office where such application shall have been made, and in case several gangs shall offer to unload the cargo mentioned in the application at the price named, shall permit the gangs in attendance to tender to unload the cargo at any lower price, and shall select for the performance of the work the gang who shall offer the lowest terms; and in case of no such lower tender, or of equality of tenders, the gang who, according to the by-laws of the commissioners, shall stand next in rotation for employment, and shall be willing to accept the same, shall be so selected; and if no gang shall be willing to accept the terms pro-

posed in such application the said clerk or other officer shall permit the gangs in attendance to tender to unload the cargo mentioned in the application at any higher price, and shall select for the performance of the work (subject to the consent of the master or other person as aforesaid making the application) the gang who shall offer the lowest terms, and in case of equality of tenders, the gang who shall stand next in such rotation for employment as aforesaid; and the said clerk or other officer shall forthwith, by notification in writing, acquaint the master or other person as aforesaid making the application with the price (if any) at which the selected gang has agreed to perform the work, or (as the case may be) with the fact that no gang is willing to perform the work: Provided always, that such notification in writing shall be given to the master or other person making the application within one hour after the receipt of the application by the clerk or other officer of the coalwhippers office, if such master or other person shall still be in attendance at the office, but if he shall have previously quitted the office, then as soon afterwards as he shall apply for the information: Provided further, that such notification in writing shall on all proceedings in any court, or before any justice or justices of peace, against any party, for employing persons not being registered coalwhippers, contrary to the provisions of this act, be received as evidence, and be deemed sufficient proof of the price at which the gang or gangs therein referred to have offered to perform the work therein mentioned, or (as the case may be) of the fact that no gang has offered to perform the work therein mentioned.

—s. 19.

Clerk to send a proper Gang with Tackle.—The said clerk or other officer shall send within one hour of the time appointed in such application for the discharge of such coals, the gang or gangs, or part of a gang of coalwhippers who shall have been so selected as aforesaid,

with the necessary tackle and implements, if required, to the vessel to be unladen, for the discharging of the cargo thereof; and if such clerk or other officer shall neglect or refuse on such application to send such gang or part of gang with such tackle and implements, and within such time as aforesaid, he shall for every such offence forfeit any sum not exceeding £10.—s. 20.

Penalties.—The master of the vessel in respect of which the application for the discharge of coals shall have been so made as aforesaid shall permit the same to be discharged by the coalwhippers sent from the coalwhippers office, according to the provisions herein contained; and if any master or any other person or persons shall prevent, obstruct, or interrupt, or attempt to prevent, the discharge of such coals being proceeded in and completed by the coalwhippers to be sent from the coalwhippers office in consequence of such application, then and in every such case the person so offending shall forfeit any sum not exceeding £10.—s. 21.

If the master of any such vessel as aforesaid, or any other person, shall employ, or permit or suffer to be employed, any person not being a coalwhipper registered and sent from the coalwhippers office under this act (except such persons or in such cases as are mentioned in the provisoes herein-after contained), to labour in the discharge of the coals from such vessel, or of any part thereof, by the process of whipping, he shall for every such offence forfeit a sum not exceeding £10: Provided nevertheless, that it shall and may be lawful for the master of any such vessel as aforesaid to employ in the discharge of coals therefrom by the process of whipping any person or persons, being actually part of the crew thereof, or of any other vessel in the port of London, and also for the *bonâ fide* owner or purchaser of the cargo of any vessel laden with coals, or of any part thereof, to employ his actual servants or labourers, having been *bonâ fide* engaged in his service for a period of not

less than fourteen days, to labour in the discharge of such cargo by whipping, and also for the several dock companies herein-before mentioned to employ such their servants and labourers as aforesaid to labour in the discharge of coals by the process of whipping from any vessel which shall be in the respective docks of the said companies respectively, and to make application for and obtain, in the manner herein-before mentioned, the services of a sufficient number of coalwhippers, although less than a complete gang, to assist the persons so employed: Provided always, that it shall and may be lawful for the master of any such vessel as aforesaid to employ persons not being registered coalwhippers to discharge such coals by whipping in the following cases; (that is to say,) in case he shall not, within the time within which the clerk or other officer is herein-before required to send a gang or gangs of coalwhippers for the discharge of such coals, be supplied with such gang or gangs and such requisite implements and tackle as are mentioned in his application; or in case he shall receive from such clerk or other officer such notification as aforesaid that no gang of coalwhippers have declared themselves willing to discharge such coals at the price named in his application; and the several persons not being registered coalwhippers who shall be employed in the before-mentioned cases shall not be liable to the penalties herein-before imposed upon non-registered persons for discharging coals from vessels by whipping: Provided nevertheless, that if such clerk or other officer shall state in such notification that a gang or gangs of coalwhippers are willing to discharge such coals at some stated price per ton higher than that named in such application, and such master shall not agree to such higher price, it shall not be lawful for such master to pay to the persons, not being registered coalwhippers, whom he shall employ to discharge such coals, a greater price than that which is so stated in such application, or to allow to such persons a longer period to

complete the discharge of such coals than the time mentioned in that behalf in such application, and if he shall pay to such persons any such greater price, or shall allow to such persons any such longer period, he shall be liable to forfeit for every such offence, any sum not exceeding £10.—s. 22.

Payment of Coalwhippers Wages.—Immediately after the discharge of the cargo, or the part thereof undertaken to be discharged by the coalwhippers sent from the coalwhippers office, shall be finished, the master of the vessel in which they were employed, or such other person as aforesaid, shall pay to *some person authorized by the said commissioners* the full hire and wages due in respect of the labour of such coalwhippers in current money of the United Kingdom; and from and after the establishment of the coalwhippers office under this act so much of the 1 & 2 Vict. c. 101, s. 12, as relates to the payment of the wages of persons employed in the discharge or delivery of coals from vessels laden therewith in the port of London shall be and the same is hereby repealed: Provided always, that such master or other person as aforesaid shall not be compellable to pay such hire or wages except on board the vessel.—s. 24.

The person so authorized as aforesaid by the said commissioners shall receive the money to be paid as hire or wages for the labour of the coalwhippers so discharging the cargo of such vessel as aforesaid, and shall deduct therefrom the sum or proportion prescribed under the authority of this act, not exceeding one farthing in each shilling, and shall, either immediately on board such vessel or forthwith thereafter at the nearest head office or branch office or station of coalwhippers, pay and divide the residue of the monies so received to and among the coalwhippers so employed, without any other deduction or abatement, and without imposing any terms or conditions whatever; and if any such authorized person as aforesaid shall neglect or refuse to pay such re-

sidue at the time and place aforesaid, or shall make any other deduction than as aforesaid, or shall impose any terms or conditions on making such payment, he shall for every such offence forfeit any sum not exceeding £10.—s. 25.

Commissioners Regulations and By-Laws.—For better carrying into execution the purposes of this act, the said commissioners are authorized to make, when and as they shall deem necessary, by-laws and regulations for keeping the register by this act established, and prescribing the testimonials, proofs, and particulars to be required of persons before or upon registration therein, and settling the terms of entry therein, and of the certificates to be delivered, and fixing the fees, not exceeding in any case the sum of 4d. for any such registration or renewed certificate, to be paid for registration and renewed certificates under this act, and for fixing the amount, not exceeding the sum hereinbefore limited, of the deduction to be made out of such hire or wages, for the purposes of this act; and for the settling of demands, the paying in and withdrawing of monies, the payment of orders, and the disposal of funds, and the keeping, auditing, and publication of accounts under this act; and for determining the time of attendance of the coalwhippers at the coalwhippers office or its branches, their division into gangs, and the rotation of their employment; and for securing the due performance on the part of the coalwhippers of their contracts to discharge coals, with reference to the time specified in each such application as aforesaid, for the completion of the discharge of the cargo, as well as in other respects, and for regulating the rate of the delivery of coals in cases in which no time shall have been specified in such application, and for annulling such contracts in case of their misbehaviour or other sufficient cause, and for promptly substituting other coalwhippers in such cases for the fulfilment of such contracts; and for the guidance, govern-

ment, and control in all respects of the coalwhippers certificated, and for the management of the offices and stations established, and the officers and servants appointed under this act, and for carrying the same fully into execution; and to impose the suspension or forfeiture of the employment of coalwhippers, or of any office or place created under this act, or to fix any reasonable penalties (not exceeding the sum of £5 for any offence) for the breach or non-observance of any such by-law or regulation; and from time to time, by any other by-law or regulation, to rescind, suspend, alter, or vary any by-law or regulation by them made: Provided always, that the said commissioners shall submit all by-laws and regulations proposed to be made by them to the lords of the said committee of her Majesty's privy council, for their consideration and supervision, and shall receive and consider any amendments which they may suggest therein; and one week after such submission the said commissioners shall cause a copy of such proposed by-laws and regulations to be publicly affixed in some conspicuous place in the Coal Market, and (if the same shall be established) in the head coalwhippers office in London; and if such proposed by-laws and regulations should be sanctioned by the lords of the said committee without alteration, or if the amendments which they shall suggest therein shall be adopted, or if the said committee should fail to express an opinion on the by-laws and regulations to them submitted within the space of four weeks next after such submission, the said commissioners shall make public such by-laws and regulations by the advertisement thereof once in the *London Gazette*, and by affixing copies thereof in some conspicuous place or places in the Coal Market and Custom-house of the city of London, and in the head coalwhippers office, if any, established under this act, and in the respective Custom-houses at Gravesend, Newcastle, Sunderland, Stockton-on-Tees, and Leith, and at such other

places and in such other manner as to them shall seem fit.—s. 25.

It shall be lawful for the said lords of the said committee of her Majesty's privy seal to sanction or to disapprove of such proposed by-laws and regulations, or to suggest any amendments therein, so that such sanction or disapproval on such suggested amendments be notified to the said commissioners within the space of four weeks next after the submission of such proposed by-laws and regulations to the said committee.—s. 26.

Such by-laws and regulations shall have full legal effect at the termination of four weeks from the time when they were so made public by the said commissioners, and a copy, purporting to be made of any such by-law or regulation, and authenticated by the signature of the registrar for the time being of the said commissioners, shall, without any further proof, be received as evidence of the by-law or regulation of which it purports to be a copy, and of such by-law or regulation having been duly made, submitted, issued, and published.—s. 27.

Commissioners interested in Contracts, &c.—If any person, being a commissioner under this act, shall be directly or indirectly interested or concerned in any contract which shall be made or entered into by or on behalf of the said commissioners, for or concerning any work to be done under this act, or materials to be employed therein, every such contract shall be void, and the person who, being a commissioner, shall be so interested or concerned, shall for every such offence forfeit and pay the sum of £100 to any person or persons who shall sue for the same.—s. 28.

Legal Proceedings.—All fines, penalties, or forfeitures by this act, or by virtue of the powers and authorities thereof, imposed, not exceeding £25, shall be sued for within three calendar months after the offence or offences committed, and all such fines, penalties, and for-

feitures shall be levied and recovered before any justice or justices of the peace for the county, city, or place where the offence shall be committed; and such justice or justices is and are hereby empowered and required, upon information or complaint to him or them made, to grant a summons or warrant to bring before him or them such offender or offenders at the time and place as shall be in such warrant specified; and if, on the conviction of the offenders respectively, either on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath (which oath such justice or justices is and are hereby empowered to administer), such fine, penalty, or forfeiture shall not be forthwith paid, the same shall be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice or justices; and the overplus of the money (if any) raised by such distress and sale, after deducting the fine, penalty, or forfeiture, and the cost and charges of making such distress and sale, shall be rendered to the owner of the goods and chattels so distrained; and for want of distress, or in case the fine, penalty, or forfeiture shall not be forthwith paid, it shall and may be lawful to and for such justice or justices to commit every such offender to the goal or house of correction for the county, city, or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding six calendar months, unless such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid; and all such fines, penalties, and forfeitures, when recovered, shall be paid as herein-after directed.—s. 29.

In all cases in which by this act any penalty or forfeiture is made recoverable before a justice of the peace it shall be lawful for any justice of the peace to whom complaint shall be made of any offence against this act to summon the party complained against before him, and on

such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing was exhibited.—s. 30.

Provided, that it shall be lawful for any justice or justices before whom any such conviction shall take place, if they or he shall think fit, to order and direct any part, not exceeding one half, of such fines, penalties, and forfeitures to be paid or applied to or for the use of the informer or informers, or other persons aiding or assisting in the apprehension of the offender or offenders or any of them.—s. 31.

It shall be lawful for any justice or justices before whom any person or persons shall be brought or convicted for any offence for which a penalty is imposed by this act, to direct all or any part, according to the discretion of such justice or justices, of the reasonable expenses of any constable, police officer, or other witness, of the matter which shall be charged, and of such compensation (if any) for the time and trouble of such witness, as such justice or justices shall think reasonable, to be paid either by the offender or offenders, or the complainant or complainants; and the sum so ordered to be paid shall and may be recovered, together with any penalty of which the person by whom the same shall be ordered to be paid shall have been convicted, or without, in the same manner as any penalty is directed to be recovered by this act, and shall be paid to such constable, police officer, or other witness.—s. 32.

Appeal to the Quarter Sessions.—It shall and may be lawful for any person or persons so convicted by any justice or justices of the peace as before mentioned, of any

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offence or offences against this act, or against any rule, order, or by-law made in pursuance thereof, to appeal to the justices of the peace assembled at the next general quarter sessions or general sessions to be holden for the county, city, or place where such conviction shall be made, on giving immediate notice of such appeal, and finding sufficient security to the satisfaction of such justice or justices for prosecuting the said appeal with effect, and abiding the determination of the court therein; and such justices in such general quarter sessions or general sessions shall hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them the said justices shall seem just and reasonable, and the decision of the said justices therein shall be final, binding, and conclusive; and no proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by certiorari, or any other writ or process whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary thereof in anywise notwithstanding.—s. 33.

Attendance of Witnesses.—Any such justice or justices of the peace before whom any such fines, penalties, or forfeitures shall be sued for may summon before him or them any person who shall, in or by the complaint or information made to him or them, appear to be a necessary witness as to the matters thereby charged, to appear before him or them at a time and place to be specified in the summons; and in case such person so summoned shall not appear according to such summons, then, upon due proof of the service of such summons, in manner aforesaid, such person so summoned, and not appearing in compliance therewith, shall forfeit and pay the sum of £25, to be levied and recovered in such manner and by such ways and means as are hereinbefore directed as to other penalties: and it shall and may be

lawful to and for the said justice or justices to cause such person to be apprehended by warrant under the hand and seal or hands and seals of such justice or justices, and to be brought before him or them ; and thereupon, whether such person shall appear upon summons as aforesaid, or shall be apprehended as aforesaid, such justice or justices shall and may proceed to examine him or her upon oath as to the matter of such complaint or information ; and in case such person shall refuse to be sworn or to answer or to give evidence therein, then and in every such case it shall and may be lawful to and for such justice or justices, by warrant under his hand and seal or their hands and seals, to commit such person so refusing to be sworn or to answer or to give evidence as aforesaid to the common gaol or house of correction of the city, county, or place in or for which such justice or justices shall then act, there to remain for any space of time not exceeding six calendar months—s. 34 ; and persons corruptly giving false evidence relating to this act are declared liable to the penalties of wilful and corrupt perjury.—s. 35.

Penalties above £25 how to be recovered.—All fines, penalties, or forfeitures exceeding the sum of £25 by this act imposed for any offence or offences committed against this act shall and may be recovered by action of debt, bill, plaint, or information in any of her Majesty's courts of record at Westminster, wherein no essoign, protection, wager of law, or any more than one imparlance, shall be allowed, by the person or persons who shall inform and sue for the same within one calendar month after the offence or offences shall be committed ; and one moiety of all such fines, penalties, or forfeitures shall be to and for the use of our sovereign Lady the Queen, her heirs and successors, and the other moiety thereof (together with double costs of suit) shall be to and for the use of the person or persons who shall inform or sue for the same—s. 36 ; and there are the usual clauses as to distress not being unlawful for want

of form, and the parties not being deemed trespassers ab initio, and the form of conviction.*

Tender of amends, limitation of actions, double costs, &c.—ss. 37—40.

And all pecuniary penalties and forfeitures which shall be recovered for any offences against this act, or any by-law or regulation established under the authority hereof, shall, unless the application thereof be herein or therein otherwise directed, be paid to some officer on behalf of the coalwhippers office, and be applied in aid of the fund established by this act.—s. 41.

Coalwhippers Fund.—And in reference to the monies to be received under or by the authority of this act, all monies which shall arise from the deduction out of the wages of coalwhippers by this act authorized to be made, and from the fees or payment for their registration and for renewed certificates to them delivered, and the pecuniary penalties and forfeitures which shall be recovered under this act, and the monies which shall remain (after payment of all expenses) from the produce of the sale of any materials or hereditaments sold under this act, and the rents of any hereditaments let under this act, shall be paid into the chamber of the city of London, and shall be carried to the account of the said commissioners, and shall be and constitute the coalwhippers fund; and the said monies in such fund shall be appropriated and applied by the order of the said commissioners in writing, signed by any five or more of the said commissioners, in the order, course, and manner hereinafter mentioned; (that is to say,) firstly, in defraying the expenses of or incident

* Be it remembered, That on the day of in the year of our Lord A. B. is convicted before me one of her Majesty's justices of the peace for the [*here specify the offence, and the time and place when and where committed, as the case may be*], contrary to an Act of Parliament made in the year of the reign of Queen Victoria, intituled, [*here insert the title of this Act*]. Given under my hand and seal, the day and year first above written. C. D.

to the passing of this act; secondly, in defraying the salaries and allowances of the officers and servants appointed under the authority of this act, the rents, repairs, taxes, interest, or principal money borrowed, and other current and incidental expenses of the registrar, and the offices and stations to be established under the provisions or authority of this act, or otherwise to be incurred in carrying this act into execution; thirdly, in the discharge of any principal money which shall have been raised on the credit of the coal duty of one penny per ton for the purposes of this act, or in refunding to the stock or fund created by the said first hereinbefore mentioned act the amount of any principal monies and interest which shall have been so raised, and shall have been paid off and discharged by the said duty; and the residue, if any, shall be held over as a balance of account, or, if the commissioners shall think fit, shall be invested in the purchase of stock in some of the public stocks or funds, or upon government or real securities, at interest, in the names of the commissioners for the time being, and shall from time to time be applied as the commissioners shall think fit in diminution of the deduction hereinbefore authorized to be made from the hire or wages of the coalwhippers.—s. 42.

And there shall be provided and kept one or more book or books in which all the monies which shall be received and paid by virtue of this act shall be entered and set down, with the dates, occupations, and particulars of such receipts and payments; and the said commissioners shall in each and every year lay before both houses of parliament, within six weeks after the time of their meeting, an account of the sums received and paid under the several heads of receipt and payment hereinbefore enumerated.—s. 43.

Limits of the Port of London.—For the purposes of this act the limits of the port of London shall be considered to be so much of the port of London, not higher

than London Bridge, and not lower than Gravesend in the county of Kent, as shall be fixed from time to time by the said commissioners; and that this act and the provisions thereof shall extend to coals laden, transhipped, or reshipped in the said port by the process of whipping, as well as to coals unladen therein by that process; and the term "whipping" shall be construed to mean the discharging of coal from a vessel by raising the coal from the hold in a basket or box by manual labour only, with the aid of ropes and a pulley, and shall include not only the persons who so raise the coal, but also those who fill and empty the basket or box so raised; and that the word "gang" shall be construed to mean not only a complete gang, consisting of nine coalwhippers, but also a portion of a gang when the services of a portion of a gang are required.—s. 44.

CHAPTER XXXI.

THE RETAIL TRADE IN LONDON, AND THE CUSTOMS AS TO APPRENTICES AND FEMES COVERT.

THE laws against strangers setting up in trade in the City of London, though relaxed as we have seen with regard to the wholesale trader (*a*), are yet in full operation as to *retail* dealers, who are, with a very few exceptions, always compelled, by legal process, to become free of this city (*b*). The freedom of the city, we have seen, may be acquired in various ways (*c*); but the most ancient, and, at the same time, most useful regulation, is that of apprenticeship, which, it has been before observed, was early required by most trading corporations (*d*), and intended as a salutary restriction upon traders and artisans, by compelling them to make themselves perfect at an early period of life in that branch of industry which they afterwards intended to pursue; and the legislature, in the instance of the apprenticeship statute of Elizabeth (*e*), expressly adopted the custom of London, and made it generally binding on the country at large; so that a previous apprenticeship was absolutely required, in order to carry on trade in any part of the kingdom.

The compulsory clauses of this statute, after a lapse of two centuries and a half, were repealed by the 54 Geo. III. c. 96, with a reservation, however, in favour of the customs of London, or any other city, town, corporation, or company lawfully constituted—s. 4; and the whole control over trade having been now taken away from other corporations by the Municipal Corporation Act (*f*),

(*a*) *Ante*, p. 388.

(*b*) *Id. ib.* p. 66.

(*c*) *Id. ib.* p. 64.

(*d*) *Id. ib.* p. 381.

(*e*) 5 Eliz. c. 4, s. 27.

(*f*) 5 & 6 Will. IV. c. 76, s. 14.

the old system of apprenticeship remains in force only in the City of London, which is not included in that act.

By the custom of London, every freeman (*g*) may take an apprentice; and an infant, unmarried, above the age of fourteen (*h*), may bind himself apprentice to such freeman by indenture, with proper covenants, and the master thereupon shall have the same remedy against him, by action of covenant, or otherwise, as if he were of full age (*i*). The indentures should properly be enrolled before the chamberlain, as we have seen (*k*), within the first year of the apprenticeship, or they may be avoided by the apprentice; but it would appear that, notwithstanding the omission of this ceremony, the covenants remain in force (*l*), and the action will lie against the apprentice in any of the superior courts, as well as in those of the city (*m*), and at the suit of the assignee of the original master to whom the apprentice is turned over, as well as at the suit of the original master (*n*).

The executor of the master is bound, in case the latter die during the apprenticeship, to provide a new master; and it would seem that the original master (*o*) might name a new master in his will, or assign the apprentice of his own accord during his life, without making the apprentice himself a party to the assignment (*p*); and although a freeman is not allowed to take an alien apprentice (*q*), and can therefore be fined for it, yet this does not vitiate the indenture (*r*).

The wife of a freeman carrying on a separate trade,

(*g*) *Burton v. Palmer*, 2 Bulstr. 191; *Windhurst v. Gibbs*, T. Raym. 4.

(*h*) 21 Ed. IV. fol. 6.

(*i*) *Stanton's case*, Moor, 135, pl. 280; *Horn v. Chandler*, 1 Mod. 271.

(*k*) *Ante*, p. 60.

(*l*) *Id. ib.*; see *Code v. Holmes*,

Palm. 361; 2 Roll. Rep. 305.

(*m*) *Stanton's case*, *ubi sup.*

(*n*) See *Boucher v. Chester*, 1 Keb. 250.

(*o*) *Rea v. Peck*, 1 Salk. 66.

(*p*) March. 3.

(*q*) *Ante*, p. 60.

(*r*) *Doggerell v. Pokes*, Moor, 411.

may take apprentices as well as her husband (s), but the apprentice must be bound to the husband, and the widow of a freeman may also take an apprentice in her own right (t).

If the indentures be not enrolled before the chamberlain within the year, upon a petition to the mayor and aldermen, a *scire facias* issues to the master, to show cause why not enrolled, and if it was through the master's default, the apprentice may be discharged; otherwise if through the default of the apprentice, as if he would not come to present himself before the chamberlain, &c., for it cannot be enrolled unless the infant is in court to acknowledge it (u).

The chamberlain is the general arbiter of all disputes between master and apprentice (x), and can compel both to concur in completing the freedom at the end of the term; but if the freedom be not taken up, the apprenticeship is of no advantage as a qualification to trade.

By an old custom of London, a person who has served a seven years' apprenticeship to one trade of *buying and selling*, may relinquish that, and take to another (y): and this used to be considered to extend to those trades in which the statute of Elizabeth expressly required an apprenticeship (z); but it was afterwards declared to the contrary, and the recorder certified in the case of *Fletcher v. Bagshaw* (a), that the custom did not allow one brought up as an apprentice to a goldsmith, cutler, &c. to leave that and set up in any other manual occupation (b). Nor

(s) Priv. Lond. 187, 307.

(t) Priv. Lond. 307.

(u) *Code v. Holmes*, 2 Roll. Rep. 305; Palm. 361; Boh. Priv. Lond. 175, 338; see *ante*, pp. 60, 125, 194.

(x) *Ante*, pp. 60, 124.

(y) *Allen v. Tolley*, B. R. 12 Jac. 1, Calth. Rep. 9, 48; Priv. Lond. 179; *Appleton v. Stoughton*, Cro. Car. 516; and *Anon. case in Mayor's*

Court, cited in Norton's Com. p. 400.

(z) *Allen v. Tolley, sup.*

(a) Cro. Car. 347, 361; 2 Roll. Abr. 579, tit. Trial per Bouche de Recorder.

(b) *New v. Cellers*, Sid. 367; 8 Co. Rep. 128; *Rex v. Keldersley*, Sand. 311; Dyer, 279 B.; Calth. 48 and 59.

can the custom, of course, extend to such cases where an act of common council expressly requires a service in any particular company (c).

The wife of a freeman, we have before seen (d), becomes free immediately on marriage, and by the ancient custom of London she is allowed to carry on her husband's trade at his death. If she were employed in that trade for seven years, during her husband's lifetime, it was a sufficient apprenticeship, even under the statute of Elizabeth (e): and not only is this the case, but it has been shown that she may, even during her husband's lifetime, carry on business and sue and be sued as a *fême sole* (f); and she is, moreover, during coverture, personally subject to the bankrupt laws, on account of such separate trade, and her assignees are entitled to her effects and debts due to her in the course of such trade (g), and a promise from the husband to pay the wife's debts incurred in such trade will not be binding on him any more than to pay the debt of a third person, unless the promise be in writing, and a consideration be stated on the face of it (h). The custom is, however, confined to debts incurred in the wife's separate trade (i), and does not authorize her to give a bond or warrant of attorney (k), though according to the doctrine prevailing in courts of equity, her separate property would be liable to such debt (l).

If the husband meddle with the separate trade of the wife, then the latter is no longer considered a sole trader (m); but if the husband be beyond sea, or become bankrupt, or leave his trade, and his wife exercise the

(c) See *ante*, p. 47; *post*, pp. 486, *et seq.*

(d) *Ante*, p. 381.

(e) *Queen v. Morgan*, 10 Mod. 70; Bull. N. P. 193; 1 Wms. Saund. 312, note 1.

(f) *Ante*, p. 179.

(g) 1 Atk. 206; 1 Bl. Rep. 570;

Lavie v. Phillips, 3 Burr. 1783.

(h) *Fabian v. Plant*, 1 Show. 183.

(i) Per Wilmot, J., in *Lavie v. Phillips*, 3 Burr. 1780.

(k) *Read v. Jewson*, cited 4 T. R. 36.

(l) *Roper on Husband and Wife*, vol. 2, p. 126, 2nd ed.

(m) *Lavie v. Phillips*, 3 Burr. 1782.

same trade, or they both exercise the same trade distinctly by themselves, and not meddle the one with the other, the wife is within the custom (π). The separate trade of the wife need not be carried on in an open shop (σ) provided it be within the city, but the custom, being against the common law, is construed with strictness (p).

In order to preserve the marital rights of the husband, it is laid down that he may determine the wife's trading for the future, and may even at law seize her effects after satisfying all creditors (q); but it is probable that equity would interfere to prevent him, and actions by or against the wife on the custom, we have seen, will only lie in the city courts, and cannot be removed out of those courts (r). Hence it has been laid down generally that the wife can give no security on which proceedings could be taken in the superior courts, as a bond or warrant of attorney (s); and though the custom be admitted upon the record, yet the courts at Westminster cannot try whether the trade be within the custom or not (t). If, however, the husband be sued in the superior courts, he can plead the custom in bar.

In order to ensure greater regularity and skill in the different departments of trade, it has been shown that the members of the principal crafts or mysteries in London were at a very early period incorporated by the Crown (u), and took a conspicuous part in the management of the civic affairs. These companies, it has been observed, were, previous to the introduction of the modern system of foreign commerce, composed of the principal traders of London (v); and generally speak-

(π) *Perthree Justices*, Litt. Rep. 36; *Langham v. Bewett*, Cro. Car. 68. The wife would now, however, most probably, be considered as the mere servant of the husband in the conduct of the trade, if it were the same as her husband's. Mod. 26.

(σ) *Fabian v. Plant*, 1 Show. Rep. 183.

(p) 1 Roll. Abr. 567; 2 Leon. 109.

(q) Per Yates, J., in 3 Burr. 1784; *Roper's Hus. and Wife*, vol. 2, p. 125.

(r) *Ante*, p. 179.

(s) *Read v. Jewson*, 4 T. R. 362.

(t) *Moreton v. Packman*, 2 Keb. 583; *Lavie v. Phillips*, 3 Burr. 1784.

(u) *Ante*, pp. 71, *et seq.*

(v) *Id. ib.* p. 388.

ing, wherever the members of any particular trade in London have been constituted into a guild or company, a by-law of the city compelling persons exercising that particular trade to be free of such company, has been held valid (*x*); in other cases the same object has been obtained by the companies' charters of incorporation; and by the Orphans Act (*y*), all freemen are compelled to bind their apprentices to the company to which they themselves belong. The great laxity, however, at this day displayed by the different companies in enforcing their powers of control over the trades which they profess to represent, renders it unnecessary to treat at any length of these regulations, and in the following table will be seen the names of the different companies in whom the controlling power is vested, the classes of traders over whom they have the control, and in what that control consists; leaving the reader to gather more minute particulars from the Commissioners' Report, so often alluded to in the present work (*z*).

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Apothecaries . | All freemen of the city, educated and practising as apothecaries within the City of London, or seven miles thereof. | The examination, and admission, and regulation of all apothecaries in England and Wales; 55 Geo. III. c. 194. |
| Armourers and Braziers | All persons working and making vessels and wares of copper or brass wrought with the hammer, within five miles of the City of London; Charter, 17 June, 7 Anne. | The power of examining and approving all brass and copper works, edge tools, and small guns, made by members of the fraternity; the same to be examined by expert artificers elected by the master, wardens and assistants. |
| Barbers . . | All persons using or exercising the trade or business of a barber within the city, and suburbs, and liberties. | The power of making by-laws for the government of the craft. |

(*x*) *Asse*, pp. 48, 49.

(*y*) 5 & 6 Will. & Ma. c. 10, s. 6.

(*z*) 2nd Rep. of Mun. Corp.

Commissioners, part 2, London Companies, 1835.

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bakers . . | All persons carrying on the trade or business of bakers or sellers of bread within the City of London. | The power of overlooking, searching, correcting, punishing, and governing the mystery, and all persons whomsoever, whether free-men or not, and whether masters, workmen, servants, or apprentices employed in the mystery or art of baking bread to be exposed to sale. |
| Basket-makers | All persons using the art or mystery of basket making within the city. | No compulsory powers. |
| Blacksmiths . | All persons within the city and liberties using the trade or manual occupation of a blacksmith or spurrier; Act of Com. Council, 9th June, 1658. | The power of making by-laws for the government of the craft. |
| Bowyers . . | All persons of the mystery of bowyers or makers of long bows within three miles of the city. | Power of making by-laws. |
| Long Bow-string-makers. | All persons of that mystery within the city. | Powers not known. |
| Brewers . . | All persons using or exercising the art or mystery of brewers of beer or ale within the city or suburbs, or four miles thereof. | Powers of making by-laws, and of compelling persons of the same trade within the city to be free of the company; Charter, 6 April, 15 Car. I.; and Act of Com. Council, 7 July, 1753. |
| Broderers . . | All persons using the art or mystery of embroiderers within the City of London. | Power of making by-laws. |
| Butchers . . | All persons using the trade of butchers within the City of London, and two miles thereof. | Do. do., and of compelling persons of the same trade within the city to be free of the company; Act of Com. Council, 20 June, 1754; see <i>Butchers' Company v. Morey</i> , 1 H. Bl. 370; and <i>Rea v. Harrison</i> , 3 Burr. 1322. |
| Carmen . . | See <i>post</i> , p. 510. | |
| Carpenters . | See <i>ante</i> , p. 283. | |
| Clockmakers . | All persons using the art or mystery of clockmaking within ten miles of the city. | Do. do.; Act of Com. Council, 15 October, 1765. |
| Cloth-workers | All sheermens, fullers, and cloth-workers within the city and suburbs. | Power of making by-laws. |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Coach and Coach-harness Makers. | All persons professing the trades, arts, or mysteries of a coach-maker or coach-harness-maker, or selling, uttering, making, or furnishing any coaches, chariots, or coach-harness within twenty miles of London or Westminster; Charter, 31 May, 29 Car. II. | Power of making by-laws, and searching for defective goods within limits of their charter. |
| Comb-makers | All comb-makers within ten miles of London; Charter, 16 July, 11 Car. I. | Power of making by-laws. |
| Cooks . . . | See <i>post</i> , p. 497. | |
| Coopers . . . | All coopers within two miles of London. | Power of making by-laws, compelling members of the trade to take up freedom, and search for defective goods; Charter, 29 April, 16 Hen. VII.; stat. 37 Hen. VIII. c. 4. |
| Cordwainers . | All cordwainers within three miles of London. | Do. do.; Charter, 26 April, 17 Hen. VI. |
| Curriers . . | All curriers within same distance. | Power of making by-laws, but no compulsory power to make members of the trade take up their freedom. |
| Cutlers . . . | All cutlers within ditto. | Power of making by-laws, and of compelling members of the trade to take up freedom; 2 Rep. M. C. part 2, p. 90; and see Acts of Com. Council, 15 Dec. 1756, and 12 Dec. 1839. |
| Distillers . . | All persons in the City of London using the trade or business of distilling strong waters, <i>agua vita</i> , spirits, and low wines, or making vinegar, <i>beeregar</i> , and <i>alegar</i> , or any of them. | Do. do.; Charters, 9 Aug. 14 Car. I., and 13 September, 3 Jac. II.; Act of Com. Council, 29 July, 1774; and 2 Rep. M. C. part 2, p. 311. |
| Drapers . . . | All drapers within the city and liberties of London. | Do. do.; Charter in Parliament, 38 Edw. III.; Charters, 30 Nov. 17 Hen. VI., 26 July, 6 Edw. IV., 19 Jan. 4 Jac. I. |
| Dyers | All dyers within 10 miles of London | Do. do.; Charter, 26 April, 3 Anne, and Stat. 23 Geo. III. c. 15, ss. 5, 6. |
| Fan-makers . | All fan-makers within twenty miles of London, duly admitted into the fraternity. | No powers over the trade. |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Farriers . . | All farriers within seven miles of London and Westminster. | Power of making by-laws, and enforcing the admission to freedom; Charter, 25 Car. II.; and Act of Com. Council, 12 Dec. 1758. |
| Feltmakers . . | All feltmakers within four miles of London. | Do. do.; Charters, 2 Aug. 2 Jac. I., and 27 Jan. 19 Car. II.; and Act of Com. Council, 6 June, 1759. |
| Fishermen and Fishmongers. | See <i>ante</i> , pp. 326, note (A), and 409, note (e). | |
| Fletchers . . | All arrow-makers in London. | No trade control. |
| Founders . . | All persons carrying on the trade of founders and melters and workers of brass and copper wares in London, or three miles thereof. | Power of making by-laws, enforcing the admission to the freedom, and searching for defective brass weights, and brass and copper works, made, or wrought, or kept for sale; Charter, 8 Sept. 12 Jac. I.; Act of Com. Council, 9 May, 1750. |
| Framework-knitters. | All persons of that trade in London and Westminster; Charter, 19th Aug. 15 Car. II.; Strype's Stow, App. 2, p. 16. | No control over the trade. |
| Fruiterers . . | All fruiterers within three miles of London. | Power of making by-laws and trade search; Charter, 9 Jan. 3 Jac. I.; and 2 Rep. M. C. part 2, p. 222. |
| Gardeners . . | All dealers in plants and other things usually sold by gardeners, within six miles of London. | Do. do.; Charters, 18 Sept. 3 Jac. I., 9 Nov. 14 Jac. I.; 2 Rep. M. C. part 2, p. 303. |
| Girdlers . . | All pinners, wireworkers, and girdlers within three miles of London. | Do. do.; Charters, 12 Oct. 10 Eliz., 17 Oct. 15 Car. I., 19 Dec. 1 Jac. II. |
| Glass-sellers . . | All glass-sellers and looking-glass-sellers within seven miles of London. | Do. do.; Charter, 25 July, 16 Car. I.; 2 Rep. M. C. part 2, p. 320. |
| Glaziers . . | All glaziers and painters on glass within the City of London; Charter, 6 Nov. 13 Car. I.; Strype's Stow, App. 2, p. 16. | No control over trade. |
| Glovers . . | All glovers within three miles of London. | Power of making by-laws, and trade search, but not now put in force; see 2 Rep. M. C. part 2, p. 283. |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Goldsmiths . | All workers of gold and silver within the City of London. | Power to make by-laws for the regulation of the trade, and to search for and seize defective wares throughout England. |
| Gold and Silver Wire Drawers. | All persons within thirty miles of London using the trade, art or mystery of drawing and flattening gold and silver wire, and making and spinning gold and silver thread and stuff. | Powers of making by-laws, and searching for and seizing defective wares; 2 Rep. M. C. part 2, p. 338. |
| Grocers . . | All confectioners, druggists, tobacconists, tobacco-cutters, and sugar-bakers or refiners, within three miles of London. | Do. ; <i>id. ib.</i> , p. 5. |
| Gunmakers . | All gunmakers within four miles of London. | Do. do., throughout England; <i>id. ib.</i> p. 336, and Statutes 53 Geo. III. c. 115, 55 Geo. III. c. 59. |
| Haberdashers | All haberdashers within three miles of London. | Do. do., within three miles of London; 2 Rep. M. C. part 2, p. 52. |
| Hathand-makers. | Extinct; 2 Rep. M. C. part 2, p. 314. | |
| Horners . . | All dealers in horns within twenty-four miles of London. | Do. do., within twenty-four miles of London; <i>id. ib.</i> p. 246; and see Cath. Rep. 162, cited per Holt, Ch. J., in Comb. 180; 1 Show. 242; 1 Mod. 190. |
| Ianholders . | See <i>post</i> , p. 496. | |
| Joiners . . | See <i>ante</i> , p. 284. | |
| Ironmongers. | All ironmongers in the City of London. | Do. do., within the city; see Herbert's Hist. of the 12 Livery Companies, vol. 2, p. 567. |
| Leathersellers | All leather-dressers in the City of London. | Do. do., within the city, and compelling members of the trade to take up their freedom of the company; Act of Com. Coun. March, 1778; 2 Rep. M. C. part 2, p. 73. |
| Lorimers . . | All persons duly admitted members, and all persons having served a year's apprenticeship to a lorimer in London. | No control over the trade; 2 Rep. M. C. part 2, p. 261. |
| Masons . . | See <i>ante</i> , p. 284. | |
| Mercers . . | Such mercers as have been duly admitted members. | No general control over trade; see Herbert's Hist. of 12 Livery Comp. vol. 1, pp. 225, <i>et seq.</i> |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Merchant-Tailors. | All persons using the mystery of merchant tailors, or tailors and linen armourers, or working, cutting, or making men's apparel within the city and liberties. | Powers of making by-laws and trade search, and compelling all members of the craft to be free of the company; see Charter of Hen. VII. set forth in 2 Rep. M. C. part 2, p. 50, and Roll. Abr. 364; Bac. Abr. tit. By-laws B. |
| Musicians . . | Musicians or minstrels duly admitted members. | No compulsory powers; see <i>id. ib.</i> p. 240; 5 Mod. 104; <i>Chamberlain of London v. Greecourt</i> , Comb. 373, S. C. |
| Needle-makers | All needle-makers within ten miles of London; Charter, 9 Feb. 16 Car. II. See <i>ante</i> , p. 287. | No compulsory powers now exercised; 2 Rep. M. C. part 2, p. 301. |
| Painters and Paperstainers. | <i>Id. ib.</i> p. 264. | |
| Parish Clerks | All persons using that trade within ten miles of London; Charter, 2 Aug. 22 Car. II. | Powers of making by-laws to regulate the trade; <i>id. ib.</i> p. 314. |
| Patten-makers | See <i>ante</i> , p. 288. | |
| Paviours . . | All pewterers within the City and liberties of London. | Powers of compelling members of the trade to become free, and of search and regulation of trade; Charters, 25 Jan. 13 Edw. IV., 14 March, 14 Car. II.; Act of Com. Council, 29 July, 1774; and see <i>Chamberlain of London v. Compton</i> , 7 D. & R. 597. |
| Pewterers . . | | |
| Pinmakers . . | Extinct; 2 Rep. M. C. part 2, p. 298. | |
| Plasterers . . | See <i>ante</i> , p. 286. | |
| Playing Card Makers. | All persons of the trade within seven miles of London. | Powers of making by-laws for regulating the trade; Charter, 22 Oct. 4 Car. II. |
| Plumbers . . | See <i>ante</i> , p. 287. | |
| Poulterers . . | <i>Id. ib.</i> 407. | |
| Saddlers . . | All saddlers within two miles of the city; Act of Com. Council, 6 Feb. 1772. | Powers of making by-laws, compelling admission into the company, and searching for defective wares, which are still exercised; 2 Rep. M. C. part 2, p. 127. |
| Salterns . . | Persons duly admitted to the freedom | No compulsory powers now exercised. |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scriveners . | All scriveners and notaries within three miles of London. | Extensive powers as to the admission and regulation of notaries ; Stat. 41 Geo. III. c. 79 ; and see 3 & 4 Will. IV. c. 70. |
| Shipwrights . | Members of the trade duly admitted. | No control over the trade ; 2 Rep. M. C. part 2, p. 273. See 2 Bulstr. 233, as to the company of shipwrights at Rotherhithe. |
| Silk Throwers | All persons of that trade within twenty miles of London or Westminster. | Extensive powers over the trade ; see Stat. 13 & 14 Car. I. c. 15 ; trading members are required to pay a fine of £100, 2 Rep. M. C. part 2, p. 295, <i>sed. qu.</i> the legality of such a fine, <i>ante</i> , pp. 79, 80. |
| Silkmen and Silkwomen. | Extinct ; 2 Rep. M. C. part 2, p. 298 ; and see <i>Mad. Firma Burgi</i> , ch. 1, s. 10, p. 33 ; <i>And. Hist. of Com.</i> vol. 1, p. 275 ; and Stat. 33 Hen. VI. c. 5. | |
| Skianers . . | All persons using the art or mystery of skinnners or sellers of skins within the city or suburbs. | No powers over the trade now exercised by the company ; 2 Rep. M. C. part 2, p. 35. |
| Soap-makers . | Extinct ; 2 Rep. M. C. part 2, p. 303. | |
| Spectacle-makers. | All spectacle-makers, as well free as foreign, within three miles of the city ; Charter, 16 May, 5 Car. I. | Powers of making by-laws, and compelling members of the trade to take up the freedom of the company ; 2 Rep. M. C. part 2, p. 274 ; Act of Com. Council, 1 July, 1658. |
| Starch-makers | Extinct ; 2 Rep. M. C. part 2, p. 342. | |
| Stationers . | Persons duly admitted members according to the Charter of Incorporation (4 May, 3 & 4 P. & M.), who are required to be booksellers, stationers, printers, bookbinders, printsellers, or engravers ; 2 Rep. M. C. part 2, p. 230. | Privilege of entering every new book published in this country ; 54 Geo. III. c. 156, s. 2. The members of the company who belong to the trade, have a productive trading fund, in which they all participate ; 2 Rep. M. C. part 2, p. 232. |
| Tallow Chandlers. | All persons within three miles of London, exercising that trade ; Charter, 29 July, 28 Car. II. | Powers of making by-laws and trade search, <i>id. ib.</i> ; and as to oil, see Stat. 3 Hen. VIII. c. 14. |
| Tilers and Bricklayers. | See <i>ante</i> , p. 286. | |

| Name of Company. | Of whom rightly consisting. | Their Powers over the Trade. |
|----------------------|------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Timplate Workers. | Members of the trade in London. | No powers over the trade. |
| Tobacco Pipe Makers. | All tobacco pipe makers in England and Wales; Charter, 29 April, 15 Car. II. | Power to make by-laws to regulate the trade and to compel admission to the company. |
| Turners . . | All turners in the city of London. | Do. do.; 2 Rep. M. C. part 2, p. 242. |
| Vintners . . | See <i>post</i> , p. 498. | |
| Upholders . . | All members of the trade in London. | Do. do.; <i>id. ib.</i> p. 240. |
| WaxChandlers | Do. do. within ten miles of London; Charter, 23 Nov. 15 Car. II. | Do. do.; <i>id. ib.</i> pp. 99, <i>et seq.</i> |
| Weavers . . | Do. do.; Charter, 17 November, 6 Anne. | Do. do.; <i>id. ib.</i> pp. 208, <i>et seq.</i> |
| Wheelwrights | Do. do. within five miles of London; Charter, 3 Feb. 22 Car. II. | Do. do.; <i>id. ib.</i> pp. 304, <i>et seq.</i> |
| Woolmen . . | Charters lost, and extent of privileges not at present known; see 2 Rep. M. C. part 2, p. 214. | |
| Woodmongers | Extinct; see <i>ante</i> , p. 474. | |

In furtherance of the opinion given before (a), we have in the above table described the proper qualifications of a member of any of these companies to be the exercising that trade over which the particular company has the control; and though no direct judicial decision has ever been given on this point, yet with regard to those companies which are expressly stated by their charter to consist of members of the trade, there seems ample ground for believing that a *mandamus* would lie on behalf of the latter to compel the former to admit them (b).

(a) *Ante*, p. 79.

(b) *Wannell's case*, 1 Str. 675, cited *id. ib.*

CHAPTER XXXII.

THE LAWS RELATING TO VICTUALLERS AND TAVERN
KEEPERS IN LONDON.

DURING the prevalence of the ancient system of assize, by which the prices of articles of general consumption were limited by law, the civic authorities, we have seen, were invested with the power of regulating all victuallers within their jurisdiction (*a*); a power which appears from the city books to have been very strictly carried into effect (*b*); and the 7 Rich. II. c. 11, which repealed the previous acts (*c*) relating thereto, expressly provided that "all the vintners and victuallers, as well fishers as others coming with their victuals to the City of London, shall be under the governance and rule of the mayor and aldermen of the city for the time being, as in time past" (*d*).

The various classes of bakers, brewers, butchers, fishmongers, fruiterers, poulterers, and other victuallers were, in pursuance of the ordinary usage in the city, early formed into guilds or companies, and the individual members subject to their immediate governance, as well as to that of the municipal body under whose control the companies themselves acted; and to whom there was always an appeal in cases of injustice.

Amongst the ancient civic regulations for the control of victuallers, may be mentioned those relating to weights and measures, gauging (*e*), and the search for unwhole-

(*a*) See *ante*, p. 20.

(*b*) See Liber Horn. fols. 199, 234; Strype's Stow, lib. 5, p. 340.

(*c*) See Statutes 31 Edw. III. c. 10; 5 Rich. II. c. 7; 6 Rich. II. c. 11.

(*d*) See March 15, where the custom as to erecting taverns was certified by the Recorder.

(*e*) *Ante*, p. 390.

some food, which, with regard to fish (*f*), and ale and beer (*g*), are still practically in force.

The prevention of a scarcity of bread (*h*), and the suppression of fraud among the dealers in that staple article of food, was always the peculiar subject of legal provision.

The Bakers' Company are empowered by royal charter generally to correct offences concerning the trade, and to make laws and ordinances for that purpose, and to inflict and levy fines and penalties for the non-observance thereof; and in particular, within the city and suburbs, and a circumference of twelve miles, to view, search, prove, and weigh all bread made and sold by any baker, foreigner, or seller of bread, and to try whether the same be good, and of the *assize prescribed by law*; and in case of finding it unwholesome, or not of due assize, to seize and take the same and distribute it to the poor of the parish where found, and to impose reasonable fines, and to levy the same by distress and sale of the goods of offenders. Nearly similar powers, we have seen (*i*), are given to the companies of butchers, brewers, and fishmongers; but they have now fallen into disuse.

By the statute 3 Geo. IV. c. CVI., by which the system of assize has been abolished, the bread trade within

(*f*) See *ante*, p. 411.

(*g*) *Post*, p. 500, note (*A*).

(*h*) In the year 1646, and for some time previously and subsequently, it was the custom in the City of London to provide against a scarcity of corn in the city, by requiring each of the chartered companies to keep in store, in their granaries, a certain quantity of corn, to be renewed from time to time, and when required for that purpose, to be produced in the market for sale, at such times, and in such quantities, as the lord mayor or the court of common council should

direct. In times of scarcity precepts were issued by the lord mayor, to the companies, requiring them, under penalties, to provide in store certain quantities of corn, to supply the demand by sale in the corn market. This practice, however, has long since gone into disuse; and in a case where funds had been left by will to increase the stock, the Court of Chancery held that they might be applied to other purposes. *Attorney General v. Haberden's Company*, 5 Sim. 478; affirmed on appeal, 1 Mylne & Keen, 420.

(*i*) *Ante*, pp. 51, 409, 489.

the City and liberties of London, the bills of mortality, and ten miles of the Royal Exchange, is placed under legal regulations, but the powers of the Bakers' Company are expressly reserved.—s. 33. Bread may be made of flour, or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potatoes, or yeast, and mixed in any proportions, but with no other ingredient.—s. 2. It may be made of any size or weight—s. 3; but must be sold by avoirdupoise weight of sixteen ounces to the pound standard weight—ss. 4 & 5; and weighed in the buyer's presence—s. 7; and weights and scales must be always ready for the buyer's use, in the bread carts and vans in which the bread is conveyed, as well as in the shops where it is sold—ss. 8, 9: heavy penalties are imposed upon sale of adulterated bread—s. 10; or one sort of flour for another—s. 11; or mixed meal bread not marked with the letter M.—s. 12; and magistrates have powers to search and seize adulterated bread—ss. 13, 14, 15.

With regard to another class of victuallers—*inn and tavern keepers*, the strictest surveillance of the municipal functionaries was anciently required in order to secure the observance of the system of frankpledge, and prevent the harbouring of evil-disposed persons (*k*). The great neglect, however, into which the whole of these ancient regulations have now fallen, has rendered necessary the more stringent substitute of statutory provisions. None but citizens are, however, at this day allowed to keep a tavern within the city, and by an Act of Common Council still in force (*l*), it is provided that all and every persons, using the art, mystery, or occupation of an inn-holder, or holding, keeping, or occupying any common inn, hostry, or livery stable, within the City or liberties of London, shall be translated from any

(*k*) See *ante*, p. 29.

(*l*) 23 May, 1663.

company of which they are free to the Company of Inn-holders, or otherwise become free of the same company ; and the last of the company's charters (*m*) extends the Act of Common Council to the Borough of Southwark, and elsewhere, within three miles of the liberties of the city ; and very full power is given to the company by the above charter over all persons carrying on the above trades within these limits, with power to examine if any of them have or use any false unlawful measure, not marked, and if they have good and wholesome hay and fodder (*n*).

The occupation of innkeepers in ancient times was in many respects far different from that in which they are at present employed. Inns were the only places of lodging for strangers, and were consequently under the direct government of the ward authorities ; but since the passing of the Licensing Acts, which do not relate to the mere keeping an inn, but to those only in which exciseable liquors are sold (*o*), the surveillance of the civic authorities has gone into disuse, though it would certainly seem to extend to all places which under the ancient law could come under the denomination of an inn, whether used as a common boarding house, a livery stable, an alehouse, an eating house, or coffee-house (*p*). The due regulation of this last description of houses is extremely desirable, and their existence without the express sanction of the civic authorities is evidently in direct variance with the custom of the city (*q*) ; and this custom is in no way interfered with by the Licensing Acts (*r*) ; and it is now established as a general proposition, that a house of public entertainment in London, where beds, provisions, &c. are furnished for all persons

(*m*) 21 Dec. 15 Car. II.

(*n*) 2 Rep. M. C. pt. 2, p. 168.

(*o*) 9 Geo. IV. c. 61, s. 37.

(*p*) Palm. 374 ; 2 Roll. Rep. 345 ;

Bac. Abr. tit. Inns (B). The sign or notice at such a place, though not

essential to constitute an inn, is an evidence of its being so. *Parker v. Flint*, 12 Mod. 255.

(*q*) See *ante*, p. 494.

(*r*) *Mayor of Leicester v. Burgess*, 5 B. & Ad. 246.

paying for the same, but which is merely called a coffee-house or tavern, and is not frequented by stages and waggons, or has no stables, is an inn within the common law acceptance of that term (*s*), and both the guest and the landlord entitled to the same remedies as in cases of ordinary inns.

The common law imposes upon the keeper of an inn or tavern the liability to receive and entertain the traveller or guest at all times, for a reasonable remuneration (*t*), and to keep his property secure (*u*); and on the other hand, the innkeeper has a lien upon the goods of his guest for the amount of such remuneration (*x*); and by the custom of London, the innkeeper has not only the ordinary lien upon his guest's horse for the amount of the provender supplied to him, but it is said that when the value of the provender is supposed to exceed that of the horse, the latter may be duly appraised at the instance of the innkeeper, and taken possession of by the innkeeper as his own (*y*).

The regulations of the Licensing Acts being very particular, and extending to all places used for the sale of exciseable liquors (*z*), it will be unnecessary to notice them here. As regards the grant of a licence, they do not extend to freemen of the Vintners' Company, becoming so otherwise than by redemption; but, in other respects, free vintners within the metropolitan police district are subject to their provisions (*a*). The licences of other publicans in the City of London are granted by the court of aldermen in their character of a bench of magistrates (*b*);

(*s*) *Thompson v. Lacy*, 3 B. & Ald. 283.

(*t*) *Per* Lord Kenyon, 6 T. R. 17.

(*u*) Bac. Abr. tit. Inn (B), even from a distress, *id. ib.*, and Co. Litt. 47.

(*x*) *Proctor v. Nicholson*, 7 Car. & P. 87.

(*y*) Moor, 876; 3 Buls. 271;

Yelv. 67; Roll. Rep. 449; 2 Roll. Abr. 85; Vent. 71; *Jones v. Pearle*, 1 Str. 557.

(*z*) See Chitty's *Burn's Justice*, tit. *Alehouse*.

(*a*) 9 Geo. IV. c. 61, s. 36; 2 & 3 Vict. c. 47, s. 41.

(*b*) The time and mode of granting such licences, are not altered by

none but freemen being eligible for a licence (c). There is an annual meeting of the aldermen for the purpose of granting licences. Lists are sent in, for each ward, of the public houses, in all cases where the common council of the ward recommend that the licence should be granted. These lists contain a description of the situation and name of the public house, of the occupiers requiring the licence, and of the companies to which they respectively belong. They are signed by the alderman, and usually by the deputy and most of the common councilmen of the ward, or, in the absence or illness of the alderman, by the lord mayor in his stead. Where no such certificate of approbation is given, it is open to the party to petition the court; but it is very unusual for such a petition to be successful. The transfer of licences is under similar regulations.

The licences for public houses in Southwark are granted by the county magistrates of Surrey, without the interference of the corporation (d).

By an order of the lord mayor, dated 14th of February, 1826, every public house within the city is directed to be closed at 11 at night, with the exception of four houses at Smithfield, one at Fleet Market, and three at Billingsgate, for the convenience of the marketers; and by a subsequent order (e), no public house is allowed to be open on Sundays before 6 in the summer, and 7 in the winter. By the different Police Acts, no public house within the police districts is allowed to be open on Sundays, Christmas Days, or Good Fridays, before 1 o'clock in the afternoon, except for accommodation of travellers; and penalties are imposed for supplying liquors for consumption by persons apparently under 16 years of age (f), or for making a communication

the Licensing Act, 9 Geo. IV. c. 61,
s. 36.

(c) *Ante*, p. 66.

(d) 2 Rep. M. C. p. 217.

(e) 21 March, 1826.

(f) 2 & 3 Vict. c. 47, ss. 41, 42;
2 & 3 Vict. c. XCIV. ss. 26, 27.

between any unlicensed place of public resort, and one which is licensed, for the sale of exciseable liquors, or belonging to a free vintner (*g*); and to avoid the irregularities of unlicensed houses, the keepers of all houses, shops, rooms, or places of public resort, for the sale or consumption of provisions, liquors, or refreshments of any kind, are subject to other provisions which have been noticed before (*h*).

(*g*) 2 & 3 Vict. c. 47, s. 45; 2 & 3 Vict. c. XCIV. s. 29.

(*h*) See *ante*, pp. 144, *et seq.*; within the city the ancient officers called aleconners (as to whom, see

Com. Dig. Leet, M 4,) search and examine the houses of victuallers and sellers of beer four times in the year. 2 Rep. M. C. p. 100.

CHAPTER XXXIII.

PORTERS, CARRIERS, AND COACHMEN IN LONDON.

As a consequence of the controlling power over trade enjoyed by the civic body, we have seen that both the land and water carriage of goods within the city (a) have been at various times placed under municipal regulations; and these regulations have been repeatedly made the subject of judicial investigation, and determined to be valid (b).

The system of portorage, which is the most ancient of these regulations, and formerly also the most important of them, is founded not only on the general right to the

(a) *Ante*, pp. 49, 349. The custom, as pleaded in the case of *Collyer v. Stennett*, cited *post*, p. 505, was as follows:—That from “time whereof the memory of man is not to the contrary, the mayor and commonalty and citizens of the City of London have had and have been used and accustomed to have, and ought of right to have had, and still of right ought to have, by themselves and the persons by them in that behalf deputed, appointed, and permitted, the work and labour of unshipping, landing, carrying, loading, and housing (except to the houses of aliens) of all goods, wares, and merchandize imported into the port of London (and not consigned to aliens or an alien), for reasonable reward in that behalf; and that also from time whereof, &c., the mayor, aldermen, and commons of the said city, in

common council assembled, have been used and accustomed to make and pass, and of right ought to have made and passed, and still of right ought to make and pass, and when and as by them deemed meet, acts and ordinances for the distribution of said work and labour, and the ordering and regulating of the persons deputed, appointed, and permitted as aforesaid.”

(b) See *Fuserkerly v. Wiltshire*, 1 Str. 462; 10 Mod. 339. In a previous case, *Cudden v. Eastwick*, 1 Salk. 143; 6 Mod. 123, the by-law had been held, not to compel strangers to employ city porters, as they could not be deemed to know who were so qualified, but the action in that case was against the employer, and the by-law was in other respects held to be good. *Id. ib.*; and *Holt*, 433.

regulation of trade enjoyed by the civic authorities, but is also connected in some degree with the system of *metage* before alluded to (c) and with the ancient monopoly of the companies over particular departments of trade, many of such companies having quays, wharves, and tackle-houses, and other facilities for lading and unloading goods, and an exclusive right thereto at such wharves (d).

The London porters have, therefore, from an early period, been divided into distinct fellowships or societies, answering to the guilds or communities connected with other trades and avocations (e). The lading and unloading goods subject to the city right of *metage*, is entrusted to a body of men called the *Billingsgate Porters*, created a fellowship by Act of Common Council of 5th October, 1620: the *Tackle-house Porters*, who with their subordinates the *Packers' Porters*, originally formed a part of the establishment of the principal trading companies, and were attached to their respective tackle-houses, are employed in lading and unloading goods not subject to *metage*: and the management of the street portage is entrusted to a third body called the *Ticket Porters*.

Fellowship Porters.—The Act of Common Council (f), creating the fellowship of Billingsgate porters, was passed in accordance with a previous report (g), containing a complete body of regulations for the establishment and continuance of the fellowship, which is directed to consist of 400 freemen of the city, and no more, without the allowance of the alderman of Billingsgate ward for the time being, who still has the government of the fellowship, assisted

(c) *Ante*, pp. 389, 396.

(d) These wharves appear generally to have been the same as the *legal quays*, appointed by the crown; see *ante*, p. 355; and it was stated in *Collyer v. Stennett*, cited *post*, p. 505, that the tackle-house porters do not at this day insist upon working at

other than the legal quays. This may probably have arisen from their not having the same right to go upon other wharves, as at the legal quays; see *ante*, p. 367.

(e) See *ante*, p. 73.

(f) Dated 5th Oct. 1620.

(g) Dated 30th Dec. 1619.

by the deputy of the ward (styled the deputy governor), and practically superintends it, assisted by a body of rulers and assistants (*h*).

This fellowship now consists of the governor and deputy, twelve rulers, and an indefinite number of free porters not exceeding 3,000, who formerly were exclusively admitted by the governor or deputy ; but by a recent Act of Common Council (*i*), the governor and deputy are prevented admitting persons into the fellowship without the previous sanction of that court. And resolutions are from time to time passed by the latter, allowing fresh members to be admitted. The whole of the *corn meters*, *fruit meters*, *oyster meters*, *salt meters* and *shifters*, to whom the city metage duty is entrusted, are obliged to belong to the fellowship (*k*).

The applicant, who must be free of the city, is required to produce a certificate of good character and of the number of his family, from the minister and churchwardens of his parish. This is usually accompanied by additional testimonials to character. Every free porter, on his admission, gives a bond with two sureties in £40 each to the chamberlain, for his good behaviour and due payment of the quarterage, and also signs a declaration in which the duties undertaken by him are more specifically stated than in the bond. Amongst others, he undertakes not to suffer any one to work with him who is not of the fellowship.

(*h*) The Act of 1620 prescribed a body of twenty-four assistants to be elected by the company at large, subject to the approval of the alderman or deputy ; and annually, on Midsummer-day, the twenty-four assistants, with such as have been rulers, might elect six rulers. This court has power to settle disputes among the porters, hear and dispose of charges of improper behaviour, make regulations for the conduct of

the fellowship, and grant pensions and allowances when advisable ; and the court has power to fine members of the fellowship as much as 40s. In cases of dismissal, an appeal lies to the governor or deputy, but no instance of re-admission is remembered ; an ultimate appeal lies to the court of aldermen, but this is never resorted to. 2 Rep. M. C. p. 180.

(*i*) 8th Dec. 1835.

(*k*) *Ante*, pp. 396, *et seq.*

The porters of the longest standing in the fellowship are called *Corn Porters* (*l*); the others salt porters or quartermen. The distinction between them consists chiefly in this: that the corn porters have more extended beats, and are not required, as the others are, always to carry sacks and tallies with them. The salt porters are also compellable to carry any salt that is required in preference to the others, from which their distinctive name originated, although the portorage of salt now forms a very small part of their actual labour. One eightieth part of the whole number are annually admitted to the privilege of the corn porters.

The porters are classed in gangs by the court of rulers, and the gangs are bound under penalties to take whatever work they are set to by the ruler in attendance; and the ordinary fine for refusing to work is 5s. The account of what is due from the merchant or factor for the portorage is made out by the shifters,—one for the portorage above bridge, the other below bridge; which offices were formerly leased out by the court of rulers, but the appointments are now made by the common council, the persons appointed being always admitted into the fellowship. The rates of charging are settled by Act of Common Council (*m*). Each porter presents his bill of work done to the shifter, who pays him from the balance left in his hands for that purpose, deducting 1d. in every 1s. from the amount under the name of the *SHIFT*, which is afterwards divided between the shifters and the fellowship.

The functions of the Billingsgate fellowship porters are thus confined to the portorage of goods on which the metage duty is claimed; the portorage of goods not coming within this description is exercised by another fellowship of the same kind, called—

The Tackle-house and Ticket Porters.—The tackle-house porters are composed of a few persons appointed by the

(*l*) See *ante*, p. 397.

(*m*) 25th Oct. 1827.

twelve principal companies, to each of which the privilege belonged of having a tackle-house for lading and unlading goods (*n*). Each of the companies appoint one person as their tackle-house porter, and some of them two. There formerly existed also another body called the *Alien* porters, who had the exclusive right to land the goods of aliens (*o*), but the latter right has been purchased by the crown in pursuance of the statute 3 & 4 Will. IV. c. LXVI. Under the tackle-house porters were formerly appointed a body of men by the name of packers' porters, to whom the actual labour of this branch of portage was intrusted; and in an Act of Common Council, dated 26th May, 1607, it is provided that no one shall be admitted in any of the tackle-houses of the city, as a master or fellow porter, unless he be a freeman, and be admitted thereunto by the master, wardens and assistants of the company to which the tackle-house belongs; also that no person be admitted to be a *porter packer* of the goods of English merchants, or a street porter, unless he be a freeman, and be admitted by the alderman, and four of the common council of his ward.

The *Ticket Porters* are limited in number to 500: can-

(*n*) See *ante*, p. 502, and Acts of Com. Council, 25th Oct. 1570, 15th Oct. 1579, 15th Aug. 1579, 26th March, 1607, 26th Jan. 1608, 16th Oct. 1646, 6th Dec. 1712, 27th March, 1798.

(*o*) 4th Charter of Edw. IV., and 16 Car. I.; and see *Bolt v. Stennett*, 8 T. R. 608, note (*b*). The exclusive rights of the tackle-house porters have been lately made the subject of judicial investigation, it being contended that in the present altered state of the City and port of London in consequence of the formation of

the docks, the continuance of the portage monopoly can no longer be upheld; the jury, however, under the direction of Tindal, Ch. J., gave a verdict in favour of the monopoly; see case of *Collyer v. Stennett*, C. B., Nisi Prius Sittings for London, 11 July, 1840; several points were, however, reserved both as to the validity of the claim, and the mode of pleading it, which have been since argued before the court in banco; see reports, 24th May, and 9th Nov. 1841; but the judgment of the court has not yet been given.

didates for admission, must be freemen, and are required to bring a certificate from the minister and parish officers of their parish: on their admission, they give bond to the governor with two sureties in £100, for their good conduct. The governor of the fellowship is always an alderman, appointed by the court of aldermen, and acting without a deputy. The court of rulers consists of twelve, who are chosen annually, by show of hands of the whole fellowship—six from the tackle-house porters, and six from the ticket porters. The court of rulers have a power of making regulations for the management of the fellowship, and possess a general jurisdiction over the individual members, such as the appointing where each porter is to ply, &c., which is done at the time of his admission (*p*). The work respectively allotted to the two classes is divided into waterside work and up-town work. No tackle-house porters are appointed to the up-town work. There are no specified hours for working, but no porter can ply in any part of the city, except the station to which he is allotted, which stations for the up-town work are distributed through the city as occasion requires. The rates now in force for waterside work are chiefly contained in an Act of Common Council passed 27th March, 1798, and those for *up-town* work, are settled by Act of Common Council of 25th September, 1823 (*q*). Any porter refusing a job is liable to a fine of 5*s*.

(*p*) 2 Rep. M. C. p. 183. The court meets at Guildhall the second Monday in each month, except November.

(*q*) *Viz.* not exceeding 56*lb* 112*lb* 168*lb*

| | <i>s.</i> | <i>d.</i> | <i>s.</i> | <i>d.</i> | <i>s.</i> | <i>d.</i> |
|------------------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| For $\frac{1}{4}$ of a mile | 0 | 4 | 0 | 6 | 0 | 8 |
| $\frac{1}{2}$ a mile | 0 | 6 | 0 | 9 | 1 | 0 |
| 1 mile | 0 | 9 | 1 | 0 | 1 | 6 |
| 1 $\frac{1}{2}$ mile | 1 | 0 | 1 | 6 | 2 | 0 |
| 2 miles | 1 | 6 | 2 | 0 | 2 | 6 |
| Every further distance of $\frac{1}{4}$ a mile | 0 | 6 | 0 | 9 | 1 | 0 |

Ticket porters carrying and delivering any letter, message, or parcel, not exceeding 14 *lbs.* weight, and returning and bringing any other letter, &c. not exceeding such weight, can only charge half price for the latter. For the rates of portorage from inns, see *post*, p. 508.

The ticket porters claim the exclusive right of plying at the markets, and loading and unloading the waggons and salesmen's carts (*r*).

There have been continual disputes between the tackle-house and ticket porters with respect to the work belonging to each. Sundry Acts of Common Council have been passed for ascertaining and regulating those belonging to each class, and particularly on 6th Dec. 1712, 27th March, 1798, and on 11th June, 1801. By these acts, the ticket porters are declared to have the exclusive right to unship, land, carry, load, and house all merchandize (including prize goods) imported in any vessel from *Ireland, the United States of America, Hudson's Bay, Quebec, Canada, Nova Scotia, the British West Indies, with Surinam, Demerara, and Berbice*, while belonging to the crown of Great Britain: also all merchandize (except lead) coming coastwise into the port of London. The tackle-house porters, and persons employed by them, have the like exclusive privilege with respect to vessels coming from *any place North of the United States of America, (Hudson's Bay, Quebec, Canada, and Nova Scotia only excepted,) France, Spain, Portugal, Holland, Hamburg, Bremen, Germany, the East Countries, Russia, Italy, Turkey, Barbary, Morocco, Gibraltar, the Mediterranean, the South Seas, America (South of the United States, except Surinam, Demerara, and Berbice), the East Indies, Asia and Africa*, and all lead, wine, and brandy from the British plantations and other parts and places.

The exclusive rights of the tackle-house porters are not considered to extend to other than the legal quays (*s*); and by the various Dock Acts, clauses of compensation were inserted for the loss which they would sustain by not being allowed to act within the docks (*t*). The dock companies, in fact, always exclusively employ their own

(*r*) 2 Rep. M. C. p. 182.

(*s*) See *ante*, p. 502, note (*d*).

(*t*) See West India Dock Act, 39

Geo. III. c. LXIX. s. 121; and

London Dock Act, 39 & 40 Geo.

III. c. XLVII.

servants in landing and shipping goods, and are liable for the consequences of their neglect (u).

Luggage Porters.—By the 39 Geo. III. c. 58, reciting the great exactions and abuses daily practised in the portage and delivery of boxes, baskets, packages, parcels, trusses, game, and other things in the neighbourhood of London, brought by stage waggons, carts, public stage coaches, or carriages, it is enacted that no innkeeper, warehouse-keeper or other person, to whom any box, basket, package, parcel, truss, game or other thing whatsoever, not exceeding 56 lbs. weight, is brought by any stage waggon or cart, or any public stage coach or carriage, or any porter or other person (x) employed in the portage or delivery thereof within the cities of London and Westminster, the borough of Southwark, and the suburbs and liberties thereof, and other parts contiguous not exceeding the distance of half a mile from the end of the carriage pavement in the several streets and places, shall ask or demand, or receive or take, in respect of such portage or delivery, any greater rate or price than as therein specified—s. 1 (y); and a penalty not exceeding 20s., nor less than 5s., is imposed for taking more than such rates—s. 2.

Before any such box, &c. is sent from the inn, warehouse, or other place to which the same is brought or conveyed, there must be made out and given to the porter or other person employed in the delivery thereof a card or ticket, whereon must be distinctly printed, written, or marked, the name and description of the inn, &c., and the sum due for the carriage thereof, and also the sum due for the portage or delivery, according to

(u) See *ante*, p. 366, and *Gilson v. Inglis*, 4 Campb. 72.

(x) The act does not authorize the employment of porters contrary to the custom of London; s. 12, *ante*, pp. 502, *et seq.*

| (y) <i>Vis.</i> | d. |
|---------------------------------------|------|
| Not exceeding $\frac{1}{4}$ of a mile | . 3 |
| Not exceeding $\frac{1}{2}$ a mile | . 4 |
| Do. do. 1 mile | . 6 |
| Do. do. $1\frac{1}{2}$ mile | . 8 |
| Do. do. 2 miles | . 10 |

And so in like manner the additional sum of 3d. for every further $\frac{1}{4}$ mile.

the rates and prices aforesaid, and the Christian and surname of the porter or other person employed in such delivery, which card or ticket must be delivered by the porter or other person employed as aforesaid, with such box, &c.; and penalties are inflicted for not making out such ticket or obliterating the same, or overcharging.

—s. 3. Parcels, &c. brought to any inn, &c. by public stage coach or carriage, other than stage waggons, for the purpose of delivery within the above limits, unless directed to be left till called for, must be delivered according to direction within six hours after arrival, or after 7 o'clock in the next morning, if the same arrive between 4 o'clock in the evening and such hour in the morning; and parcels brought by waggons must be delivered within twenty-four hours, under a penalty not exceeding 20*s.*, nor less than 10*s.*—ss. 4, 5. Parcels directed to be left till called for, or demanded before being sent out, can only be charged 2*d.* for the warehouse-room, and an additional sum of 1*d.* per week as long as the same remain there.—ss. 6, 7, 8.

To prevent the misbehaviour of such porters, &c., any justice of the peace within whose jurisdiction the offence arises may, upon complaint of any non-delivery, neglect, misconduct, or misbehaviour in such employment, grant a warrant to bring before him the person complained of, and, on proof of the offence, inflict a penalty not exceeding 20*s.* nor less than 5*s.*—s. 9. Any such justice may also, upon complaint of non-payment of money due for carriage or portage, grant a warrant to bring the defaulter before him, and upon proof of the claim, award reasonable satisfaction to the party grieved for his damage and costs, and loss of time, in recovering the same, and on non-payment of the sum so awarded issue a warrant of distress thereupon in the usual form.—s. 10. Prosecutions under the act must be commenced within fourteen days after the commission of the offence—s. 11; and the usual provisions are made for the recovery of

penalties, attendance of witnesses, limitation of actions, &c.

Cars, Carts, and Carroons.—In furtherance of the claim of the civic authorities to regulate the land-carriage of goods within the city, they had also from a very early period the ordering and disposing of cars, carts, and *carroons* (z); and all persons working the same within the City and liberties of London.

The carmen of London were made a fellowship by the city in the reign of Henry VIII., and were afterwards incorporated with the woodmongers, by charter of 3 Jac. I. This charter appears to have been surrendered to the crown about the year 1668 (a), when the carmen were constituted a distinct fellowship by an order of the court of aldermen (b).

Great abuses appear to have prevailed in the management of cars, and, by an old Act of Common Council (c) the number was limited to 420, which were to be all licensed by the president and governors of Christ's Hospital, under whom the management remained in accordance with various Acts of Common Council (d) until the

(z) The carroon appears to have formerly been the standing room, or place where the car plied; but it is now considered as a franchise of a mixed character, composed of a proprietary right, and an operative right. 2 Rep. M. C. part 2, p. 343; and see *Kete v. Mitchell*, 2 Roll. Rep. 413; and 1 Geo. I. st. 2, c. 57, s. 9; 30 Geo. II. c. XXII. s. 3.

(a) Strype's Stow, lib. 5, p. 227.

(b) Dated 28th April, 20 Car. II. It may, however, be a question whether the surrender of the old charter, if ever valid at all, was not afterwards invalidated by the general provisions of the 2 Will. & Ma. sess. 1, c. 8, *ante*, p. 7; and whether, as in the instances of the other incorpo-

rated London companies, which are composed of the working members of their respective trades, (see *ante*, p. 79,) the doctrine of dissolution by the death of all the members could apply. See upon this subject, Kyd on Corp. vol. 2, ch. 5, p. 447, *et seq.*; and *arg.* in *Quo warranto* case, *passim*.

(c) 23 Dec. 28 Eliz.

(d) 21st June, 1669; 15th October, 1681; and 11th May, 1829; which were repeatedly held to be valid; see *Player v. Jenkins*, Sid. 284; *Player v. Vere*, Sir T. Raym. 324; and *Shaw v. Pope*, 2 B. & Ad. 465; and the city jurisdiction is expressly saved by the 1 Geo. I. st. 2, c. 57, s. 9.

year 1838, when it was taken into the city's own hands, and the whole number of carts, cars, and carroons is now from time to time fixed by the court of common council (e). The power of licensing such carts, &c. for the purpose of working for hire from place to place within the city and liberties, and licensing and marking for the purpose of standing and plying for hire within the streets, is vested in the keeper of Guildhall for the time being. The owner of the cart must be a freeman, and, if licensed to stand and ply for hire, must be also a member of the fellowship of carmen. The fellowship is re-organized, and any freeman can be admitted a member on payment of a fine of £5, besides the ordinary fees and stamp duties.

The Hall-keeper is entitled to a sum of 5s. for every licence to the owner of a cart, &c. to work for hire from place to place; and every such licence, unless forfeited for misconduct, remains in force without renewal or further payment during the life of the original owner, o while his ownership of the cart, &c. continues.

The restriction against the working for hire of carts, &c. without being annually marked, is confined to carts, &c. standing or plying for hire within the public streets, for which purpose the owner must annually bring or send to the Guildhall every cart, car, or carroon of which he is the owner, to be marked by the Hall-keeper, paying 5s. per annum therefor. A penalty of £5 is imposed for working a cart, &c. for hire without a licence, or standing or plying for hire without such licence and annual mark, and unless renewed the latter becomes forfeited. Owners of carts, &c. licensed to stand and ply for hire, directly or indirectly permitting or suffering any other person or persons (other than their own servants) to ply for hire in any of the public streets, without the approbation of the keeper of Guildhall, are liable to a penalty of 20s. *per diem*, to be recovered as therein set forth (f).

(e) Act of Common Council, 11th May, 1838.

(f) The town carmen are compellable to do the cartage business of

The licensed cars and carts form a very small portion of the vehicles which at this day throng the crowded thoroughfares of the metropolis, all of which equally require to be subject to proper police regulations; and the Police (*g*) and Sewers Acts (*h*), we have seen, accordingly contain various provisions on this subject; but there are also other local statutes in existence relating thereto, which, though now for the most part repealed, yet in many respects within the City of London still remain in full force (*i*).

By statute 1 Geo. I. sess. 2, c. 57, s. 8, every person driving any cart, dray, car, or waggon in London, and riding thereon, not having some other person to guide the same, is subject to a penalty of 10s., to be levied by distress and sale, by warrant from one alderman or justice of the peace, and in default of payment to be sent to the house of correction, and kept to hard labour for three days; and if the driver be the owner, the penalty is by a subsequent statute increased to 20s. (*h*).

Drivers riding on such carriages (except when drawn by one horse only, or by two abreast, and conducted by some person holding the reins), and by any negligence or wilful misbehaviour causing any hurt or damage, are liable to a penalty not exceeding 10s., or to be committed for any time not exceeding one month, at the discretion of the justice; and any person witnessing the offence may apprehend the offender, and immediately deliver him to a constable or peace-officer to be conveyed before

the port when called on, and are responsible for the safety of their load, and the conduct of their servants. 2 Rep. M. C. p. 340. They are not, however, liable to an action at common law for negligence as *common carriers*. *Brind v. Dale*, 8 Car. & P. 207; 2 M. & R. 80, *S. C.*

(*g*) *Ante*, pp. 142, 143, 150, 153.

(*h*) *Ante*, p. 295.

(*i*) See stat. 5 & 6 Will. IV. c. 50, s. 1, in which these statutes are enumerated and repealed, except as to the City of London.

(*k*) 24 Geo. II. c. 43, s. 8.

a justice (*l*), and a penalty of 20s. is imposed for abuse or resistance to the person apprehending (*m*).

By 6 Geo. I. c. 6, in order to prevent the carriage of excessive loads of meal, malt, bricks and coals in the metropolis, it is enacted, that no person or persons shall carry at any one load, in London, in waggons or carts having their wheels shod or bound with tire or streaks of iron, more than 12 sacks of meal, each sack containing five bushels, and no more, or more than 12 quarters of malt, or seven hundred and a half of bricks, or one chaldron of coals, under the penalty of forfeiture of one of the horses and harness.

By stat. 18 Geo. II. c. 3, s. 33, a penalty of 40s. is imposed for using any car, cart, or dray in London, drawn by more than three horses, and every cart, car or dray is required to be marked with the name of the owner in some conspicuous part thereof—s. 4; and certain regulations now repealed (*n*), were made for registering such carts, &c.; but a penalty of £5 is still imposed on the owner of any waggon, wain, cart, car, dray, or other such carriage, drawn or used in any public street or road within the distance of five miles from the General Post Office, not having his name and place of abode printed at full length, one inch in height, white upon black, or *e converso*, on some conspicuous part of the right or off side, clear of the wheel, or upon the right or off side shaft (*o*), and a similar penalty on the driver or person using such waggon, &c. without the name of the owner being painted as above; and such waggon, &c. may be seized by any person, and lodged in the *greenyard*, or any livery stables, for safe custody, until the offence has been heard and determined by a magistrate, who may thereupon order the same to be sold to pay the penalty and expenses (*p*).

(*l*) *Id. ib.* s. 7; and 24 Geo. II. c. 43, s. 9; and 30 Geo. II. c. 22, s. 13.

(*m*) *Id. ib.* See also regulations of carts, &c., *ante*, p. 297.

(*n*) 1 & 2 Will. IV. c. 22, s. 1.

(*o*) *Id. ib.* s. 59.

(*p*) *Id. ib.* s. 60; the title and place of abode of a peer of the realm is a sufficient description on the cart, 6 & 7 Vict. c. 86, s. 4.

Rates of Carriage.—By the 30 Geo. II. c. 22, s. 3, the justices of the peace for the city of London are directed at sessions to fix the rates of carriage of goods taken up in the city of London for conveyance to any distance not exceeding three miles therefrom, and make rules for governing carts and their drivers, and compel payment for carriage of goods by such carts, &c. according to the rates so fixed, and annex penalties for breach of any such rules not exceeding £5 for any one offence, as to the major part of the justices present seems meet.

Obstructions.—Persons wilfully obstructing the passing and repassing in any public streets, lanes, or passages, or setting any empty casks or other vessels in any such streets, &c. (except for such time only as is necessary for the removing thereof to or from any place, or for the trimming thereof), or setting any empty cart or other carriage in any such street, &c., except whilst plying for hire in the proper appointed places(*q*), or whilst loading or unloading goods or commodities, or waiting to take up or set down a fare; are subject to a penalty not exceeding 20s. nor less than 5s., or one month's imprisonment and hard labour.—s. 5.

Metropolitan Public Carriages.—The first establishment in the metropolis, of carriages let for hire, was in the year 1625, when coaches which were used as short stages to Hackney and other suburban villages, were occasionally let out for hire; and there were at that time altogether about twenty, which were attached to the principal inns(*r*). It soon, however, became necessary to subject them to legal restriction, and after an ineffectual attempt on the part of the city to impose such regulations(*s*), rules for their observance were incorporated in various statutes for the regulation of the streets(*t*), the

(*q*) See *post*, p. 524; and *ante*, 148, 295.

(*r*) Beckman's History of Inventions. In 1654 there were about 200, 1 Bl. Com. 326; there are now about 2,300 hackney carriages and

1000 licensed omnibuses, &c., regularly employed in the metropolis.

(*s*) See *Robinson v. Watkins*, Skinner, 384; 4 Mod. 229; Kyd on Corp. vol. 2, p. 154.

(*t*) 13 & 14 Car. 2, c. 2; 5 & 6

provisions of all of which have been since repealed ; and by two recent statutes (*u*), the public vehicles in the metropolis are classified either as *hackney carriages* or *metropolitan stage carriages*. The former include all carriages (except stage carriages), standing on hire, or plying for passengers for hire at any place within the limits of the city of London and the liberties thereof, and metropolitan police district ; and the latter include every stage carriage, except such as on every journey go to or come from some town or place beyond the limits aforesaid.—6 & 7 Vict. c. 86, s. 2.

Licences.—By the 1 & 2 Will. IV. c. 22, the commissioners of stamps are now authorized to license all such carriages, without limitation as to number, the proprietors paying the duties specified by the act (*x*).—ss. 6 and 7. The person applying for a licence is required to sign a requisition, specifying the Christian and surname of every proprietor or part proprietor, under a penalty of £5—s. 11 ; the licence to bear date the day on which granted—s. 12 ; the proprietor giving notice of change of abode under a penalty of 40s.—s. 13.

The licence cannot be discontinued without a written notice to the commissioners, expiring on the first Monday in the month, unless revoked by the commissioners themselves, and the plate must be in either case re-delivered to the commissioners, under a penalty of £10—ss. 16, 17 ; and persons using any such carriage without licence or plate, or not delivering up recalled plates, are subject to a similar penalty—s. 22. The particulars of every licence are required to be entered in books at the Stamp Office, and such entries are sufficient evidence

Will. & Ma. c. 22 ; 9 Anne, c. 23, &c.

(*u*) 1 & 2 Will. IV. c. 22 ; 6 & 7 Vict. c. 86.

(*x*) *I. e.* £5 for the licence, and 10s. per week during the continuance thereof, 1 & 2 Will. IV. c. 22, sched. A. ; which duties are declared

to be a charge upon the carriage, horses, harness, and everything kept to be let for hire therewith, in whose hands soever they may be ; and the same may be seized and sold to pay the duty—ss. 18, 19 ; but the horses are not liable to the duties imposed by the 4 Geo. IV. c. 62.

of the statements therein contained—s. 32 ; and procuring a licence in a fictitious name is declared to be a misdemeanor.—s. 33.

The regulation of such carriages is entrusted to an officer called the "Registrar of Metropolitan Public Carriages," appointed by one of the secretaries of state, such registrar having an establishment of clerks and servants paid for by the commissioners of stamps and taxes.—6 & 7 Vict. c. 86, s. 5.

Every *metropolitan stage carriage* is required to be so designated in legible characters, both on the outside and inside; and to have also legibly painted inside and out the number of the Stamp Office plate, and a list of the fares, which fares the act directs may be recovered before a magistrate in a summary way, like those of hackney carriages.—s. 7.

The registrar, or his deputy appointed under the act, may grant licences to act as drivers or conductors(y), or watermen(z); no driver being under sixteen years of age: such licences to specify the number, names, place of abode, age and description of the person licensed; and in the case of watermen, the standings and places allotted to them, and the nature of their duties; the licences to bear date the day on which they are granted, and to continue in force until the 1st of June succeeding, unless revoked or suspended, and to have proper columns for entering the name and address of every proprietor employing the driver or conductor named therein, and the days on which they enter and quit his service; and the act requires to be delivered to every such person with the licence, an abstract of the laws in force relating to

(y) *I. e.* all directors or other persons except the driver attendant upon the passengers in any metropolitan stage carriage, s. 2.

(z) *I. e.* persons supplying water to the drivers of hackney carriages at the standings or places where hackney carriages usually stand or

ply for hire, or assisting the drivers at such standings in managing or taking care of the horses or carriages, and attendants upon metropolitan stage carriages, at places where such carriages usually stop or ply for passengers.—*Id. ib.*

drivers, conductors or watermen, and of the penalties to which they are liable for any misconduct, and also a metal ticket, specifying the office or employment of the person licensed, and the number of his licence.—s. 18. The licence to be granted on a 5s. stamp—s. 9, and to be granted on a written requisition, signed by the applicant, containing all particulars required by the registrar; and any fraud or misrepresentation in obtaining it, subjects the offender to a penalty of £5.—s. 14.

Notice of change of abode must be given to the office, and licence altered accordingly, under a penalty of 20s. ; no entry at Guildhall is now required—s. 15; but all licences are required to be entered in a book at the registrar's office, and a certificate of such entry is a sufficient substitute for the licence.—s. 16.

All licensed drivers, conductors, and watermen must at all times whilst employed, or when summoned to appear before any justice, wear such ticket conspicuously on the breast, so that the same may be distinctly legible, and produce the same to any person requiring to inspect it, under a penalty of 40s.—s. 17.

The licences and tickets are required to be delivered up when discontinued; and the wearing a ticket without a licence, or wearing a false ticket, subjects the offender to a penalty of £5, and to forfeiture of the ticket, which may be seized by any constable or agent of the registrar—s. 18, new tickets being delivered at the office in lieu of defaced tickets; and a penalty of 40s. is imposed for not delivering up a lost ticket when found, or for wearing a ticket after being defaced—s. 19; and forging such ticket is declared to be a misdemeanor.—s. 20.

Licences to be retained by Employer.—Every proprietor of a hackney carriage and of every metropolitan stage carriage, who shall permit or employ any licensed person to act as the driver or conductor thereof, shall require to be delivered to him, and shall retain in his possession, the licence of such driver or conductor while such driver or conductor shall remain in his service; and in all cases of

complaint where the proprietor of a hackney carriage or of a metropolitan stage carriage shall be summoned to produce the driver or conductor of such carriage before a justice of the peace, he shall also produce the licence of such driver or conductor, if at the time of receiving the summons such driver or conductor shall be in his service; and if any driver or conductor complained of shall be adjudged guilty of the offence alleged against him, the justice of the peace before whom he shall be convicted shall in every case endorse upon the licence of such driver or conductor the nature of the offence, and the amount of the penalty inflicted; and every proprietor who shall neglect to require to be delivered to him, and to retain in his possession, the licence of any driver or conductor during such period as such driver or conductor shall remain in his service, or who shall refuse or neglect to produce such licence as aforesaid, shall for every such offence forfeit the sum of £3.—s. 21.

Disputes between Master and Driver.—Any justice of the peace may hear and determine all matters of complaint between any proprietor of a hackney carriage or metropolitan stage carriage and the driver or conductor of the same respectively, and to order payment of any sum of money that shall appear to be due to either party for wages or for the earnings in respect of any such carriage, or on account of any deposit of money, and to order compensation to the proprietor in respect of damage or loss which shall have arisen through the neglect or default of any driver or conductor to the property of his employer intrusted to his care, or in respect of any sum of money which such proprietor may have been lawfully ordered by a justice of the peace to pay, and which has been actually paid pursuant to such order, on account of the negligence or wilful misconduct of his driver or conductor, and to order such compensation to either party in respect of any other matter of complaint between them as to such justice shall seem proper.—s. 22.

It shall not be lawful, either in any court of law or

before any justice of the peace, to enforce the payment of any sum of money claimed from any driver or conductor by any proprietor on account of the earnings of any hackney carriage or metropolitan stage carriage, unless under an agreement in writing, which shall have been signed by such driver or conductor in the presence of a competent witness; and no such agreement shall be liable to any stamp duty.—s. 23.

When any licensed driver or conductor shall leave the service of any proprietor, such proprietor shall, upon demand thereof, return to him his licence: Provided always, that if the said proprietor shall have any complaint against the said driver or conductor, it shall be lawful for such proprietor to retain the licence for any time not exceeding twenty-four hours after the demand thereof, and within that time to apply to the police court of the district in which the said proprietor shall dwell, or if he shall dwell in the city of London or the liberties thereof, then to some justice of the said city, for a summons against him; and the said proprietor, at the time of applying for the summons, shall deposit the licence with the clerk of such police court or justice; and in case any proprietor, who, upon demand thereof, shall have refused or neglected to deliver to any driver or conductor his licence, shall not within twenty-four hours, exclusive of Sunday or any day on which the police court shall not sit, apply for such summons, and deposit the licence, as aforesaid, or shall not appear to prosecute his complaint at the time mentioned in the summons, it shall be lawful for such driver or conductor to apply at the same police court, or to some justice as aforesaid, for a summons against such proprietor; and upon hearing and deciding the case, the justice, if he shall think there was no just cause for detaining the licence, or that there has been needless delay on the part of the proprietor in bringing the matter to a hearing, shall have power to order the said proprietor to pay such compensation to the said driver or conductor as the said justice shall think

reasonable ; and payment of such compensation shall be enforced in the same manner as any penalty may be enforced under this act by such justice ; and the justice shall cause the licence to be delivered to the said driver or conductor, unless any misconduct shall be proved against him, by reason whereof the justice shall think that such licence should be revoked or suspended ; and so long as any proprietor shall neglect to apply for such summons and deposit the licence, after demand thereof, any justice of the peace may in like manner from time to time order compensation to be paid by him to the same driver or conductor ; and no proprietor shall, under any pretence or by virtue of any claim whatever, retain beyond the time aforesaid the licence of his driver or conductor.—
s. 24.

Suspension or Revocation of Licences.—Any justice of the peace before whom any driver, conductor, or waterman shall be convicted of any offence, whether under this act, or any other act, if such justice in his discretion shall think fit, may revoke the licence of such driver, conductor, or waterman, and also any other licence which he shall hold under the provisions of this act, or suspend the same for such time as the justice shall think proper, and for that purpose may require the proprietor, driver, conductor, or waterman in whose possession such licence and the ticket thereunto belonging shall then be to deliver up the same ; and every proprietor, driver, conductor, or waterman, who, being so required, shall refuse or neglect to deliver up such licence and any such ticket, or either of them, shall forfeit, so often as he shall be so required and refuse or neglect as aforesaid, the sum of £5 ; and the justice shall forthwith send such licence and ticket to the registrar, who shall cancel such licence if it has been revoked by the justice, or, if it has been suspended, shall, at the end of the time for which it shall have been suspended, re-deliver such licence, with the ticket, to the person to whom it was granted.—
—s. 25.

Seizure of unlicensed Carriages.—In any case where any hackney carriage licence shall have been discontinued or revoked, and the Stamp Office numbered plate in respect of the same shall not have been delivered up to the commissioners of stamps and taxes or their proper officer, or where any hackney carriage plate shall have been recalled, under the said act of the second year of the reign of his late Majesty, by such commissioners or officer, and the same shall not have been delivered up as by law required, and in any case where any hackney carriage plate shall be in the possession of or be used by any person who shall not have a licence in force relating to the same, it shall be lawful for any officer of stamp duties, or any constable or other peace officer, to seize and take away any such plate wheresoever the same may be found, in order to deliver the same to the said commissioners; and for the purpose of seizing and taking away any such plate, or any forged or counterfeit plate, it shall be lawful for any such officer of stamp duties, constable, or peace officer to stop any carriage in or upon which the same may be; and any person who shall molest, obstruct, or hinder any such officer of stamp duties, constable, or peace officer in seizing or endeavouring to seize or take away any such plate shall forfeit the sum of £5; and if in any such case where any such plate shall be found in the possession of any person who shall not have a licence in force relating to the same, it shall appear to the satisfaction of the said commissioners that the said plate is or was so possessed by such person for the purpose of being used with the consent of the person to whom the licence relating to the same shall have been granted, or that such licensed person had parted with the same for the purpose of being used by any other person, and also in any case where any plate shall have been recalled as aforesaid and not delivered up, it shall be lawful for the said commissioners, if they shall think proper, to revoke the licence to which such plate shall relate.

Hackney Carriages.—Every hackney carriage must

have painted on a plate, placed in some conspicuous place on the outside, in legible letters of black or white, one inch in length, the number of passengers to be carried therein in words at length, and the driver is compellable to carry such number of passengers, or any less number, at the option of the hirer, under the penalty of 40s.—1 & 2 Will. IV. c. 22, s. 46 (a); and every driver thereof is obliged and compellable, if required, (without reasonable excuse for refusal,) to drive such carriage to any place within the limits of the act, under a penalty of 40s.—s. 34.

Hackney carriages standing in the street, unless actually hired, are deemed to be plying for hire, and the driver is obliged and compellable to go with any person desirous of hiring such carriage; and on the hearing of the complaint, the driver must produce evidence of having been and being actually hired at the time, under a penalty of 40s.—s. 35; but a magistrate may award compensation to the driver if improperly summoned—s. 36. If standing or plying for hire on Sundays, the driver is compellable to drive on that day.—s. 37.

Fares.—The rates and fares are also fixed, and to be calculated always by the hour and mile, and not by the day.—s. 38 (b).

If a *hackney carriage* is discharged beyond the limits of the metropolis (c) after 8 P. M. and before 5 A. M., the driver may demand over and above the fare, in respect of distance or time, the full rate or fare from the place of discharge to the nearest point of the said limits, or to any hackney coach stand where such carriage shall have been hired beyond such limits, at the option of the per-

(a) And 6 & 7 Vict. c. 86, s. 3; the word "passenger" includes every person except one driver, and one conductor, if any. *Id. ib.* s. 2. And friends of the driver, &c., are not allowed to accompany the latter without passengers' express leave. *Post*, p. 524.

(b) *Viz.* 2 horses,

s. d.

For 1 mile, or 30 minutes 1 0

For every additional half
mile, or 15 minutes . 0 6

1 horse, two thirds of the above.

(c) See *ante*, p. 515.

son discharging the same. If *any hackney carriage* is hired and driven into the country, and there discharged, at a distance of four miles or more beyond the said limits in the day time, and not after the hour of 8 P. M. or before 5 A. M., the driver may demand for the return thereof from the place of discharge to the nearest point of the said limits, or to any hackney-coach stand beyond any such limits where such carriage shall have been hired, at the option of the person discharging such carriage, for every mile the additional fare of 6d.; but no such additional fare is payable for any less distance than four miles.—s. 39.

Persons refusing to pay the fare, or compensation for any damage or loss of time, may be committed to prison—s. 41; and drivers refusing to take a passenger, or exacting or demanding more than the legal fare, are subject to a penalty of 40s.—s. 42.

Agreement with driver to pay more than the legal fare is not binding; and a sum paid beyond the proper fare may be recovered, under a penalty of 40s.—s. 43; but the driver cannot charge more than the sum agreed to for driving a distance, although such distance be exceeded by the driver, under a penalty of 40s.—s. 44; and a previous agreement to take for any job any sum less than the proper fare, must not be broken by the driver, under the same penalty of 40s.—s. 45.

Drivers of hackney carriages may demand a reasonable sum as a deposit from the person hiring and requiring them to wait, over and above the fare to which the driver is entitled for driving thither; and drivers refusing to wait, or going away before the expiration of the time agreed on, or refusing to account for deposit, are subject to a penalty of 40s.—s. 47.

Proprietors of hackney carriages are required to provide in such carriages proper check strings or wires, and the driver must hold the same in his hand, under a penalty of 20s.—s. 48.

Property in Hackney Carriages.—Property left in a hackney carriage is required to be deposited by the driver, within four days, at the Stamp Office, under a penalty of 20s., and if not claimed within a year it may be delivered up to the driver if applied for.—s. 49 (d).

Proprietor or driver of hackney carriage permitting or suffering any person to ride or be carried in, upon or about such carriage, without express consent of the person hiring the same, is subject to a penalty of 20s.—s. 50.

Proprietors or drivers of hackney carriages standing or plying for hire, or suffering the same to stand across any street, or common passage, or alley, or alongside any other hackney carriage, or two abreast (e), or within eight feet of the curbstone of the pavement in any street, or common passage, or alley, or any proprietor, driver, waterman, or other person feeding the horses of such hackney carriage in any street, road, or common passage, (save only with corn out of a bag, or with hay held or delivered by hand,) or refusing to give way in the streets, if the driver of such carriage conveniently can, to any private coach or other carriage, or obstructing or hindering the driver of any other hackney carriage in taking up or setting down any person into or from such hackney carriage, or wrongfully, in a forcible or clandestine manner, taking away the fare from any other proprietor or driver, who, in the judgment of the justice before whom the complaint is heard, appears to be fairly entitled to such fare, are subject to a penalty of 20s.—s. 51.

Standings for Hackney Carriages.—The court of alder-

(d) A hackney coachman or proprietor is not liable as a common carrier for passengers' luggage, unless the same be paid for expressly, *Upshore v. Aislie*, 1 Com. R. 25.

(e) Hackney carriages may stand

two abreast in Palace Yard; but a clear space of ten feet is required to be left after every four hackney carriages on any other standing, under a penalty of 20s.—ss. 52, 53.

men are authorized to make orders for regulating the standings of hackney carriages (*f*) in London and Southwark, and a penalty of £5 is imposed for offending against such orders (*g*).—s. 54.

Drivers of hackney carriages leaving the same unattended in any street, or road, or at any place of public resort or entertainment, whether hired or not, are subject to a penalty of 40*s.*; and any constable, &c. may drive such carriage to a place of safety.—s. 55.

Driving Carriages without Proprietor's Consent.—Every driver or conductor authorized by any proprietor to act as driver of any hackney carriage, or as driver or conductor of any metropolitan stage carriage, who shall suffer any other person to act as driver of such hackney carriage, or as driver or conductor of such metropolitan stage carriage, without the consent of the proprietor thereof, and also every person, whether duly licensed or not, who shall act as driver or as conductor of any such carriage without the consent of the proprietor thereof, shall forfeit the sum of 40*s.*; and every driver or conductor charged with such offence, who, when required by a justice of the peace so to do, shall not truly make known the name and place of abode of the person so suffered by him to act as driver or conductor without consent of the proprietor, and also the number of the ticket of such person (if licensed), shall be liable to a further penalty of 40*s.*; and it shall be lawful for any police constable, without any warrant for that purpose, to take into custody any person unlawfully acting as a driver or as a conductor or as waterman, and to convey him before any justice of the peace, to be dealt with according to law, and also, if necessary, to take charge of the carriage and every horse in charge of such person, and to deposit the same in some place of safe custody until the same can be applied for by the proprietor.—s. 27.

(*f*) Which must not stand opposite the General Post Office, 6 & 7

Vict. c. 86, s. 31.

(*g*) See *ante*, p. 514.

Furious Driving, &c.—Every driver of a hackney carriage, or driver or conductor of a metropolitan stage carriage, who shall be guilty of wanton or furious driving, or by carelessness or wilful misbehaviour causing any hurt or damage to any person or property being in any street or highway, and also every driver, conductor, or waterman who during his employment shall be drunk, or shall make use of any insulting or abusive language, or shall be guilty of any insulting gesture or any misbehaviour, shall for every such offence forfeit the sum of £3; or it shall be lawful for the justice before whom such complaint shall be brought, if in his discretion he shall think proper, instead of inflicting such penalty, forthwith to commit the offender to prison for any period not exceeding two calendar months, with or without hard labour, as the justice shall direct; and in every case where any such hurt or damage shall have been caused, the justice, upon the hearing of the complaint, may adjudge, as and for compensation to any party aggrieved as aforesaid, a sum not exceeding £10, and may order the proprietor of the hackney carriage or metropolitan stage carriage, the driver or conductor of which shall have caused such hurt or damage, forthwith to pay such sum, and also such costs as shall have been incurred, and payment thereof may be enforced against such proprietor as any penalty or sum of money may be recovered under and by virtue of this act; and any sum which shall be so paid by the proprietor shall in like manner be recovered in a summary way before a justice of the peace from the driver or conductor through whose default such sum shall have been paid, upon proof of the payment thereof pursuant to the order of the justice, or it shall be lawful for the justice in the first instance to adjudge the amount of such compensation to be paid by such driver or conductor to the party aggrieved.—s. 28 (A).

Hackney and Stage Carriage Standings.—It shall be lawful for the commissioners of police of the metropolis from

(A) See also 1 & 2 Will. IV. c. 22, s. 56, and *ante*, p. 150.

time to time to appoint standings for hackney carriages at such places as they shall think convenient within the metropolitan police district (i), except the borough of Southwark, and at their discretion to alter the same, and from time to time to make regulations concerning the boundaries of the same, and the number of carriages to be allowed at any such standing, and also to make regulations for enforcing order at the places at which metropolitan stage carriages shall call or ply for passengers, and for fixing the time during which each such carriage shall be allowed to remain at any such place; and every driver of a hackney carriage, and also every driver or conductor of a metropolitan stage carriage, who shall wilfully disregard or not conform himself to such regulations, shall for every such offence forfeit the sum of 40s.—s. 29.

No standing shall be appointed for hackney carriages, either within the metropolitan police district or within the city of London, by virtue of this act or of any other act, except in the centre part of the street, unless in the case of a street with houses only on one side of such street.—s. 30.

Nothing herein or in any other act contained shall be deemed or construed to authorize any hackney carriage to stand or ply for hire opposite to the General Post Office in Saint Martin's-le-Grand, London, or any part thereof.—s. 31.

The court of mayor and aldermen of the city of London, within the city of London and the liberties thereof, and the borough of Southwark, to make regulations for enforcing order at the places at which metropolitan stage carriages shall call or ply for passengers, and for fixing the time during which each such carriage shall be allowed

(i) Several local acts, such as that for Marylebone (35 Geo. III. c. lxxiii. s. 95), for New Bond St., &c. (32 Geo. III. c. lxxi. s. 23) also regulate the standings for hackney carriages

in the metropolis; and these do not appear to be superseded by the general act. See *Frost v. Williams*, 7 Ad. & E. 773; *Rees v. Rawlinson*, 4 D. & R. 186.

to remain at any such place ; and every driver or conductor of a metropolitan stage carriage who shall wilfully disregard or not conform himself to such regulations, shall forfeit the sum of 40s.—s. 32.

Every driver of a hackney carriage who shall ply for hire elsewhere than at some standing or place appointed for that purpose, or who by loitering or by any wilful misbehaviour shall cause any obstruction (*h*) in or upon any public street, road, or place ; and also every driver or conductor of any metropolitan stage carriage who by loitering or any wilful misbehaviour shall cause any obstruction in or upon any public street, road, or place, or shall improperly delay such carriage on any journey, or wilfully deceive any person in respect to the route or destination thereof, or who shall refuse to admit and carry at the lawful fare any passenger for whom there is room, and to whose admission no reasonable objection is made, or who shall demand more than the legal fare for any passenger, or who, for the purpose of taking up or setting down a passenger, or, except in case of accident or other unavoidable necessity, shall stop such carriage opposite to the end of any street, or upon any place where foot passengers usually cross the carriage way, or who shall ply for hire or passengers by blowing a horn, or by using any other noisy instrument within the limits of the metropolis, as defined by the said act of the second year of the reign of his late Majesty ; and every conductor of a metropolitan stage carriage who shall allow any person beside himself to ride upon the steps or in the place provided for him ; and every driver of a hackney carriage, whether hired or unhired, allowing any person besides himself, not being the hirer, or a person employed by such hirer, to ride on the driving box ; and every driver or conductor of any metropolitan stage carriage who shall

(*h*) If a hackney carriage stand before a tradesman's door and hinder customers, the tradesman may lawfully take hold of the horse or horses and lead them away, and is

not bound to take the remedy given him by common law or statute. *Slater v. Swan*, 2 Str. 872. See the case of *Rex v. Cross*, 3 Campb. 224, and *ante*, p. 150.

smoke whilst acting in such capacity, after an objection taken by any person riding in or upon such carriage, shall for every such offence forfeit the sum of 20s.—s. 33.

Property in Stage Carriage.—All property left by any passenger in any metropolitan stage carriage shall be given up to the conductor of such carriage, or if there be no conductor, to the driver, upon pain of a penalty of £20, to be paid by any person refusing or neglecting to give up any such property belonging to another person; and the conductor or driver of every such carriage to whom any such property shall be given up, or who shall himself find it in the carriage, shall, within four days next after the same shall have been left, carry the property, in the state in which he shall find the same, to the head office for stamps in the city of Westminster, and shall there deposit and leave the same with the proper officer to be appointed by the commissioners of stamps and taxes for that purpose, upon pain that every such conductor making default herein shall forfeit £20; and the property so deposited by any conductor or driver shall be dealt with in the same manner as property left in hackney carriages, and deposited by the drivers of such carriages.—s. 34.

Proprietors to be summoned, and to produce Drivers.—When any complaint shall be made before any justice of the peace against the driver of any hackney carriage, or the driver or the conductor of any metropolitan stage carriage, for any offence committed by him against the provisions of this act, or of the recited act of his late Majesty, or of any order or regulations made in pursuance of this act, it shall be lawful for such justice, if he shall think proper, forthwith to summon the proprietor of such carriage to produce before him, or such other justice of the peace as shall be then present, the driver or conductor by whom such offence was committed, to answer such complaint; and in case such proprietor, after being duly summoned, shall fail to produce the driver or conductor, it shall be lawful for the justice of the peace before

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whom such driver or conductor should be produced (if he shall think fit) to proceed, in the absence of such driver or conductor, to hear and determine the case in the same manner as if he had been produced, and to adjudge payment by the proprietor of any penalty or sum of money and costs, in which the driver shall be convicted; and any sum of money which shall be so paid by the proprietor, shall be recovered in a summary way from the driver or conductor by whose default such sum shall have been paid upon proof of payment thereof, pursuant to the order of the justice, and upon proof of service of the notice hereinafter mentioned : Provided always, that if the justice of the peace shall deem it proper, it shall be lawful for him, when such proprietor shall fail to produce his driver or conductor, without any satisfactory excuse to be allowed by such justice, to impose a fine of 40s. upon such proprietor, and so from time to time as often as he shall be summoned in respect of such complaint, until he shall produce his driver and conductor; and every proprietor so summoned to produce his driver or conductor, shall cause to be given to such driver or conductor, or to be left at the abode specified in his licence, or (if such licence shall expire after the offence committed and before the hearing of the complaint) at his usual place of abode, a written notice of the time and place when and where such driver or conductor shall be required to attend; and if such driver or conductor shall not attend according to such notice, it shall be lawful for a justice of the peace to issue a warrant for his apprehension; and if after such notice any driver or conductor shall, without a reasonable excuse to be allowed by the justice, neglect or refuse to attend at the time and place therein mentioned, or (having previously left the service of the proprietor so summoned as aforesaid) shall not at the time and place of his attendance produce his licence, he shall forfeit the sum of 40s., and so from time to time as often as he shall so neglect or refuse.—s. 35.

Proceedings before Magistrates.—Any magistrate specially appointed under the authority of the said act (1 & 2 Will. IV. c. 22), for the purpose of hearing and determining offences against the provisions of that act, or such other magistrate as shall be in attendance at the office appointed in that behalf, may hear and determine any complaint for any offence against the provisions of this act, or of any act now in force or hereafter to be in force, wheresoever the cause of complaint may arise, within the city of London or the liberties thereof, or elsewhere within the limits of this act, so far as the same shall relate to hackney carriages or to metropolitan stage carriages, or to watermen, in like manner as if such provisions had been included in the aforesaid act.—s. 36.

Upon the hearing of any complaint made under the provisions of this act or the recited act, 1 & 2 Will. IV. c. 22, or of the orders and regulations aforesaid, it shall be lawful for the justice of the peace by whom the same shall be heard to examine and take the evidence of the informant or complainant in any dispute concerning the amount of fare paid or demanded by either party, or in any dispute between the proprietor and driver or conductor of any hackney carriage or metropolitan stage carriage concerning the wages of such driver or conductor, or in any complaint of personal injury done to the complainant by the driver of any hackney carriage or metropolitan stage carriage, or in any case in which the informant or complainant shall be entitled to no pecuniary advantage besides his costs and expenses, or being entitled to some compensation or pecuniary advantage, shall either give up all claim to the same, or shall not be the only witness in the case.—s. 37.

All complaints under the provisions of the said recited act (1 & 2 Will. IV. c. 22), or of this act, or of the orders and regulations made in pursuance of either of them, except such as shall be made by the direction of the commissioners of stamps and taxes, and except in cases

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where some other term of limitation is specially provided by this act, shall be made within seven days next after the day on which the cause of complaint shall have arisen.—s. 38.

Any justice of the peace may hear and determine all complaints under the provisions of this act or of the said recited act (1 & 2 Will. IV. c. 22), and adjudge the payment of any penalty or of any sum of money under either of the said acts, or of the orders, and regulations made pursuant to either of them, and to order payment of the same, with or without costs, either immediately, or at such time and place, and by such instalments, as he shall think fit; and in case of nonpayment of the sum so ordered to be paid, or of any one instalment thereof, to adjudge the party making default to be imprisoned in the common gaol or house of correction for any term not exceeding two calendar months, with or without hard labour, such imprisonment to cease on payment of the sum so adjudged or ordered to be paid, or to issue his warrant for the levying of any such sum of money, together with the costs and expenses of such warrant or of levying the same, on the goods of the party making default, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus (if any), and where goods of such party making default cannot be found sufficient to answer the penalty or sum ordered to be paid, and all such costs and expenses, to commit such party to prison, there to remain for any time not exceeding two calendar months, unless such penalty or sum of money, and all such costs and expenses, shall be sooner paid; and every such imprisonment shall be with or without hard labour as such justice shall direct: Provided always, that no imprisonment for nonpayment of any sum ordered to be paid on account of wages, or the earnings of any carriage, or of any deposit of money, shall be for a longer period than *one calendar month*, or with hard labour; and all proceedings whatso-

ever before any justice of the peace under any of the provisions of this act or the recited act of the reign of his late Majesty, and the judgment of the said justice thereon, shall be final and conclusive between the parties, and shall not be quashed or vacated for want of form, and shall not be removed by certiorari, or any other writ or process, into any superior court.—s. 39.

Sale of Goods distrained.—In all cases where any goods or chattels distrained or otherwise seized or taken under any of the provisions of this act or the recited act of the late reign, are directed to be sold, the same shall be sold by public auction, and notice of the time and place of such sale shall be given to the owner of such goods or chattels, or left at his usual place of abode, three days at least prior to such sale: Provided always, that if the owner of any such goods or chattels shall give his consent in writing to the sale thereof at an earlier period than is by this act or shall be by any such notice appointed for such sale, or in any other manner than is by this act directed, it shall be lawful to sell such goods or chattels according to such consent: Provided also, that if the owner of such goods or chattels shall, at any time before the sale thereof, pay or tender to the person who by any warrant or other process shall be directed or authorized to cause such goods or chattels to be sold the sum which he shall by such warrant or process be directed to levy or raise by the sale of such goods or chattels, together with all reasonable costs and expenses incurred, no sale of such goods or chattels shall be made.—s. 40.

Service of Summonses and other Notices.—For the purpose of serving summonses and other notices required by this or the recited act of his late Majesty the usual place of abode of any driver, conductor, or waterman, or of any person who, having been licensed as a driver, conductor, or waterman, has neglected to return his metal ticket at the expiration of his licence, shall be deemed to be the place specified in the licence; and that it shall be lawful for any justice of the peace in all cases,

upon complaint being made in respect of any matter within the meaning of this or of the recited act of his late Majesty, or of the orders and regulations made in pursuance thereof, to issue his summons to require the attendance of the person complained of before the said justice, or any other justice, at a time and place to be appointed for that purpose, or to issue a warrant for the apprehension of such person, either in the first instance, or after the issuing and service of such summons and the non-appearance of the party summoned; and every summons or other notice required by this act shall be deemed to be duly served, provided the same, or a copy thereof, shall be either personally served or left at the usual place of abode of the party to whom it shall be directed, or if he shall be a party licensed under this or the recited act of his late majesty, then at the place of abode specified in his licence.—s. 41.

Enforcing Attendance of Witnesses.—Every person summoned as a witness to give evidence touching any matter to be heard under this act or the recited act of his late Majesty, who shall neglect or refuse to appear at the time and place for that purpose appointed by any justice of the peace, without a reasonable excuse to be allowed by such justice, or who shall appear but refuse to be examined or give evidence, shall forfeit the sum of £5.—s. 42.

Forms to be used.—Every summons or warrant of distress which shall be had or taken against the proprietor of a hackney carriage or metropolitan stage carriage, for the default of the driver or conductor thereof, for the recovery of any penalty, compensation, or costs under the provisions of this act, or such rules, orders, and regulations as aforesaid, may be drawn or made out according to the several forms contained in the schedule hereunto annexed, or to the effect thereof, with such changes as the case may require; and every order, conviction, warrant, or other proceeding which shall be drawn, had, or issued under the provisions of this act or of the re-

cited act of the reign of his late Majesty, or of such rules, orders, and regulations as aforesaid, shall be good and effectual without stating the facts in evidence, or more than the matter or offence in respect whereof such order, conviction, or other proceeding as aforesaid shall have been had, made, or issued.—s. 43 (1).

(1) SCHEDULE referred to in the foregoing Act.

No. 1.

Form of a Summons to the Proprietor of a Hackney Carriage or a Metropolitan Stage Carriage to produce the Driver or Conductor thereof to answer a Complaint.

To *E. F. of, &c.*, proprietor of the hackney carriage, number
[or the metropolitan stage carriage, number].

Whereas complaint hath been made by *C. D.* against the driver of the hackney carriage, number [or the driver or conductor of the metropolitan stage carriage, number], on the day of now last past [or instant], charging that the said driver [or conductor], on the day of now last past [or instant], (of which said carriage you were then the proprietor,) at or about the hour of did [here state the alleged offence]: These are therefore to require you to produce the said driver or conductor before me, or such other magistrate as shall be present, at on the day of at of the clock in the noon, then and there to answer the said complaint.
Dated the day of

(Signed)

One of the police magistrates of the metropolis,
[or

One of her Majesty's justices of the peace
for]

No. 2.

Form of a Warrant of Distress for levying upon the Proprietor of a Hackney Carriage or Metropolitan Stage Carriage the Penalty in which the Driver or Conductor thereof has been convicted.

To *A. B. of, &c.*

| | |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Metropolitan Police District to wit. | } Whereas <i>C. D.</i> , the driver of the hackney carriage, number [or the driver or conductor of the metropolitan stage carriage, number], on the |
| | |

Cases of joint Proprietors.—In every case where there shall be more than one proprietor of any hackney car-

day of was duly convicted of a certain offence, for that [*here state the offence*], whereby he hath been adjudged to forfeit the sum of over and above the sum of for the costs and charges of the informer, making together the sum of which hath not been paid by the said driver [*or conductor*], nor by any person on his behalf: and whereas, according to the statute in that behalf made, the said *E. F.*, the proprietor of the said carriage, hath been required to pay the said sum of which he hath neglected and refused to do: therefore I command you to levy the said sum of by distraining the goods and chattels of the said *E. F.*, the said proprietor; and if within the space of five days next after such distress taken the said sum of together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, taken, and seized as aforesaid, and shall levy and raise thereout the said sum of and all reasonable costs and charges of taking and keeping and selling such distress, rendering the overplus (if any) to the owner of the said goods and chattels; and you are to certify to me what you shall have done by virtue of this my warrant. Given under my hand and seal the day of

(Signed)

One of the police magistrates of the metropolis,

[*or*

One of her Majesty's justices of the peace
for]

No. 3.

Form of Warrant of Commitment of the Proprietor of a Hackney Carriage or Metropolitan Stage Carriage for Want of a sufficient Distress whereon to levy the Penalty in which the Driver or Conductor of such Carriage has been convicted.

To *A. B.* of, &c., and to the keeper of the common gaol [*or house of correction*] at

| | |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Metropolitan Police District | } Whereas, &c. [<i>proceed as in the form No. 2, to the words</i> “ which he hath neglected and refused to do,” <i>inclusive</i>]: and whereas it has been duly made to appear to me that no sufficient distress of the goods and chattels of the said <i>E. F.</i> , |
| to wit. | |

riage or metropolitan stage carriage, it shall be sufficient, in any information, summons, order, conviction, warrant, or any other proceeding under the provisions of this act or of the said recited act of the reign of his late Majesty, to name one of such proprietors without reference to any other or others of them, and to describe and proceed against him as if he were sole proprietor.—s. 44.

Mitigation of Penalties.—Any justice of the peace by whom any person shall be convicted of any offence under this act, or under the recited act of his late Majesty, may lessen the penalty or term of imprisonment in such manner as he may think fit.—s. 45.

Appropriation of Penalties.—All penalties or sums of money ordered and adjudged within the metropolitan police district to be paid under this act or the recited act of his late Majesty, and not otherwise appropriated, shall be payable to her Majesty; and all penalties or sums of money ordered and adjudged within the city of London or the liberties thereof to be paid under this act or the recited act of his late Majesty, and not otherwise appropriated, shall be payable to the chamberlain of the city of London, in aid of the expenses of the police of the said city.—s. 46.

the said proprietor, can be found whereon to levy the said sum of :
therefore I command you the said *A. B.* to apprehend and take the said
E. F., and safely to convey him to the common goal [*or house of correction*]
at in the of and there to deliver him to the keeper
thereof, together with this warrant. And I do hereby command you the
said keeper to receive into your custody in the said goal [*or house of cor-*
rection] him the said *E. F.*, and him therein safely to keep for the space of
unless the said sum of shall be sooner paid.

Given under my hand and seal the day of

(Signed)

One of the police magistrates of the metropolis,

[*or*

One of her Majesty's justices of the peace
for]

Limitation of Actions—Venue—Notice of Action—Tender of Amends, &c.—All actions and prosecutions which shall be brought or commenced against any person for any thing done under the authority of this act, or of such orders and regulations as aforesaid, shall be commenced and prosecuted within three calendar months next after the fact committed, and not afterwards, and shall be brought and tried in the city of London, or the county of Middlesex, and not elsewhere; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and if the cause of action shall appear to arise from any matter or thing done by the authority of this act, or of any such orders and regulations as aforesaid; or if any such action shall be brought after the expiration of such three calendar months, or shall be brought in any other county or place than as aforesaid; or if notice of such action shall not have been given in manner aforesaid; or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into court after such action commenced, by or on behalf of the defendant, the jury shall find a verdict for the defendant; and if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or shall discontinue any such action, or if, on demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant may have for costs of suit in other cases of law; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be had shall, at the time of such trial, certify in writing his approbation of the action, and of the verdict obtained thereupon.—s. 47.

ADDENDA.

P. 118. The practice of the recorder making his report of capital convicts is discontinued; and by the 7 Will. IV. & 1 Vict. c. 77, s. 1, the presiding judge at trials at the Central Criminal Court is empowered to direct execution to be done in capital cases as at other gaol deliveries.

P. 119, note (f). The grant of the office of recorder is *tenend' per se vel deputatum* Com. Dig. Officer, D. 2. See observations of Lord Kenyon as to deputy recorder of Chester, *Rex v. Ginever*, 6 T. R. 736.

P. 128. The city coroner's jurisdiction extends now to the Queen's Prison.—5 Vict. sess. 2, c. 22, s. 19.

P. 132. The fee-farm rent of £300 reserved to the Crown out of the shrievalty of Middlesex by the charter of Henry I., has by successive alienations become the private property of Sir Wm. Rush, Bart., to whom it is paid yearly by the sheriffs.

P. 133. One of the sheriffs of London may, in his own name, take and assign a replevin bond without the intervention of the other sheriff. *Thompson v. Farden*, 1 Scott, N. R. 275; 1 M. & G. 535.

The courts of Westminster will recognize the existence of two sheriffs of London. *Nicol v. Byrn*, 10 Bingh. 339; 2 Dowl. 761, S. C.

P. 142. Under the 3 Geo. IV. c. 55, s. 21, the provisions of which are similar to sect. 18 of this act, it was held that constables were only justified in apprehending persons of general bad character as rogues and vagabonds, and not persons suspected only of a particular felony. *Cowles v. Dunbar*, 1 R. & M. 37; 2 Car. & P. 565, S. C.

executory, or customs confined to the city courts, except when pleaded by way of bar in the superior courts. *Per* Lord Eldon, *Beard v. Webb*, 2 Bos. & P. 98.

P. 184. See as to custom of distribution, case of *Bruin v. Knott*, V. Ch. 29 March, 1843, 6 Jur. 885.

P. 189. The subject of foreign attachment has been much discussed in the case of *Crosby v. Hetherington*, 5 Scott N. R. 637, mentioned *ante*, p. 5; the principal point settled there was, that a plea of judgment by foreign attachment must state that the garnishee is within the jurisdiction of the mayor's court at the time of the attachment.

P. 195. As to the equitable jurisdiction of the mayor's court, see the case of *Reg. v. Porson, re Videll and Hewell*, Law Times, vol. ii. p. 213.

P. 268, note (b). The custom as to ancient lights in London has been held to be barred by the Prescription Act. *Salters' Company v. Jay*, 2 Gale & D. 414.

By the case of *Bradbee v. Christ's Hospital*, (2 Dowl. N. S. p. 172; Law Journal, vol. xx. part 9, p. 209,) it appears that a licence from the Lord Mayor, confirmed by the surveyor of pavements, under the 57 Geo. III. c. XXIX. s. 75, (*ante*, 316,) justifies the erection and keeping up a hoard during the process of building or repairs within the city.

The form of licence in that case was as follows:—

"London to wit.—Whereas application hath been made to me, Sir P. Laurie, Knight, Lord Mayor of the City of London, by Mr. Long, builder, to erect a hoard before premises, being in Newgate Street, London, and the serjeant and yeomen of the Channell having returned to me that they have viewed the premises, and consider that a hoard, containing in length, in front of the said premises, sixty-two feet, projecting from the same four feet, is necessary to be erected there, in order that the premises may be rebuilt with safety to the public: I do hereby give liberty that a hoard of the dimensions afore-said may be erected before the said premises, and continue four weeks from the date hereof, provided that the

said Mr. Long shall also obtain the licence of the surveyor of the pavements appointed under and by virtue of an Act of Parliament, &c. (57 Geo. III. c. 29). Given under my hand and seal, this 25th day of June, 1833.

“ P. LAURIE, *Mayor*.”

The licence of the surveyor of pavements was as follows :

“ I do hereby give leave and licence to the above-named — Long, to erect and continue four hoards in manner and for the time above mentioned.

(Signed) “ RICHARD KELSEY.

“ *Surveyor of Pavements Office, Guildhall.*”

P. 190, note (t). The bankruptcy of a creditor passes the interest in all his outstanding debts to his assignees, and therefore no such debts can be attached in the debtor's hand by any of the bankrupt's creditors,—6 Geo. IV. c. 16, s. 63 ; and as the subsequent proceedings on a bankruptcy are deemed for many purposes to revert back to the act of bankruptcy, a creditor who had attached money or debts belonging to his debtor after the latter had committed *a secret act of bankruptcy*, was formerly bound, on a commission of bankrupt being subsequently issued, to refund the amount of property attached to the assignees. *Hovell v. Browning*, 7 East, 154. But it is now declared that “ all executions and attachments against the lands and tenements, or goods and chattels of a bankrupt, *bonâ fide* executed or levied before the date and issuing of the fiat, are valid, notwithstanding any prior act of bankruptcy of which the party issuing the same had no notice at the time.”—2 & 3 Vict. c. 29, s. 1.

The 108th section of the 6 Geo. IV. c. 16, provides that no creditor having made any attachment in London or any other place, by virtue of any custom there used, of the goods and chattels of any bankrupt, shall receive upon any such attachment, more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon any part of the property of such bankrupt, *before the bankruptcy*, that is to

say, since the above recent enactment, before the date and issuing of the fiat or notice to the party issuing the attachment.—2 & 3 Vict. c. 29, s. 1.

C. issued an attachment in London on F.'s funds in the hands of B., a third party; an injunction *ex parte* was obtained to restrain the proceedings, and in the meantime F. became bankrupt; and it was held that though C. might but for the injunction have sued out execution, he was not now entitled to be paid otherwise than rateably with the other creditors. *Ullock v. Barker*, 6 Sim. 300.

P. 306, note (t). Assumpsit lies at the suit of a gas company for supplying gas to a house or other building without proof of any express contract. *City of London Gas Light Co. v. Nicholls*, 2 Car. & P. 365.

P. 315. Sect. 72 does not justify the removal of rails or other things which do not actually project or encroach on the pavement. *Bouverie v. Miles*, 1 B. & Ad. 38.

P. 324. The following is a copy of the rules of the Lord High Admiral alluded to in the text.

“Admiralty-Office, 27th June, 1827.

“By His Royal Highness William Henry Duke of Clarence, Lord High Admiral of the United Kingdom of Great Britain and Ireland.

“RULES, ORDERS, AND REGULATIONS

“For the preservation of his Majesty's moorings, and for the mooring, anchoring, and placing of all private ships of war, transports, and all other private and merchant ships and vessels, lighters, barges, boats, and other craft whatsoever, in the navigable river of Thames, and near the docks, dock-yards, arsenals, wharfs, and moorings, belonging to his Majesty therein, for the purpose of keeping the same free and open, and for ensuring a free and safe passage to and from the same respectively; made and established pursuant to an act of parliament made and passed in the fifty-fourth year of the reign of his late Majesty King George the Third, chapter 159,

intituled, 'An Act for the better regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays, and navigable Rivers in the United Kingdom; and of his Majesty's Docks, Dock-yards, Arsenals, Wharfs, Moorings, and Stores therein; and for repealing several Acts passed for that Purpose.'

"Art. 1. It is hereby ordered, that no private ship of war or transport, nor any private or merchant ship or vessel, steam-vessel, lighter, barge, boat, or other craft whatever, shall be moored, anchored, or placed within the boundaries or limits following; that is to say,

"DEPTFORD. Within sixty fathoms from any part of the south-western shore of the said river, between the north end of the wharf of his Majesty's victualling-yard at Deptford, and a spot on the same shore, situate at the distance of forty fathoms below the lower side of the entrance of Deptford Creek."

Note.—This regulation is not meant to extend to transports, convict-ships, and other vessels having occasion to load and unload at his Majesty's dock-yard and victualling-yard; all which ships and vessels may for those purposes, under the superintendence of the officers of those yards, continue to make use of the moorings which they have hitherto been accustomed to use.

"WOOLWICH. Nor within seventy fathoms from any part of the south shore of the said river, between Long's Wharf, otherwise called Trinity Wharf (which is situate above his Majesty's dock-yard at Woolwich), and a spot called the Grove, at the eastern extremity of the same dock-yard.

"Nor within one hundred fathoms from any part of the same shore between the western boundary of the wharf of the royal arsenal, at Water-lane, Woolwich, and the entrance of the canal or basin at the eastern extremity of the said arsenal.

"GREENWICH. Nor within seventy fathoms from any part of the shore, commencing at the west end of Ingress

Park, and terminating at the New Jetty, recently erected at the lower end of the said park.

“ Art. 2. It is further ordered, that no private ship of war or transport, nor any other private merchant-ship or vessel, steam-vessel, lighter, barge, boat, or other craft, shall be moored, anchored, or placed within the distance of forty fathoms from the centre of any of his Majesty’s moorings in any part of the said river from the Nore upwards.

“ Art. 3. And whereas a practice has prevailed of ships and vessels of a light draught of water, unnecessarily coming to anchor in the fair-way or mid-channel, and in the fair stream of the tide, to the great inconvenience of the public and of the navigation of the river, and frequently to the danger of ships of a larger draught and requiring deeper water :

“ It is therefore further ordered, that no ship, vessel, boat, or other craft of any description, being light, or which shall draw less than eight feet of water, shall anchor or moor in the mid-channel, or fair-stream of the tide in any part of the said river, so that all merchant-ships and vessels of burden, and of larger draught, as well as his Majesty’s ships and vessels, may have free passage up and down the said river without obstruction.

“ And lastly, in order to prevent the danger which may arise to his Majesty’s ships and stores from fire, it is ordered, that no ship or vessel, steam-vessel, boat, barge, or other craft, having any furnace, forge, or fire on board thereof, shall be moored, anchored, or placed within the distance of fifty fathoms from the centre of any of his Majesty’s moorings; nor shall any ship or vessel whatever, boat, barge, or other craft, be breamed, repaired, or fitted with engine-gear, afloat in any part of the said river or shore thereof, within a like distance of fifty fathoms from the centre of any of his Majesty’s moorings, and from his Majesty’s dock-yards, arsenals, wharfs and premises respectively.

“ By command of His Royal Highness,

(Signed)

“ J. W. CROKER.”

N N

NOTICE

ISSUED DURING THE YEAR 1842.

"In pursuance of the 54 Geo. III. c. 159 — It is hereby ordered, that no private ship of war or transport, nor any private merchant-ship, steam-vessel, lighter, barge, boat, or other craft whatever, shall be moored, anchored, or placed within the boundary or limits following, that is to say, within sixty fathoms from any part of the south-western shore of the river Thames, between the north end of the wharf of her Majesty's Victualling-yard, at Deptford, and a spot on the same shore, situated at the distance of forty fathoms below the lower side of the entrance of Deptford Creek.

"It is further ordered, that no private ship of war or transport, nor any other private merchant-ship or vessel, steam-vessel, lighter, barge, boat, or other craft, shall be moored, anchored, or placed within the distance of forty fathoms from the centre of any of her Majesty's moorings in any part of the said river from the Nore upwards.

"By command of the Lords Commissioners of the Admiralty,

(Signed)

"JOHN HILL,
Captain Superintendent."

Sect. 3 of the 54 Geo. III. c. 159 enforces the above order by a penalty of a sum of money, not exceeding £10 for each and every tide which such ship or vessel, lighter, barge, boat, or other craft shall stay and remain so moored, anchored, or placed.

Sect. 4 empowers one of his Majesty's naval or dock-yard officers, after a notice of one hour left on board to unmoor and remove any such ship or vessel to some proper place out of and beyond such spaces and distances; and the owner, master, or other person so neglecting and refusing, shall for every such offence forfeit and pay the expenses of removal and the further sum of £10.

Sect. 5 directs that, when merchant or private ships hook any of his Majesty's moorings, the person having the charge or command of such ship shall not unhook the same under a penalty of £10, but shall forthwith give notice thereof to the King's harbour-master or chief officer of his Majesty's dock-yard or naval yard, when assistance will be given forthwith; for which aid and assistance every such master, owner, or other person shall pay such reasonable sum of money, not exceeding £5, as shall be adjudged, in a summary way, by any commissioners of the navy or justice of the peace.

P. 347. As to conviction under s. 70 of the Pilot Act, see *Chaney v. Payne*, 1 Gale & D. 348.

P. 349. The Watermen's Act justifies the regulation of steam-boats by the corporation. *Tisdell v. Combe*, 7 Ad. & E. 788. The act, though it compels barge-owners to employ only licensed watermen, does not exonerate the former from responsibility in damages for the neglect of the latter. *Martin v. Temperley*, Jurist, 25th February, 1843.

No wines, spirits, or other exciseable liquors are now allowed to be sold by retail on board any steam-boat or other vessel *moored or lying at anchor* within the metropolitan police district during the ordinary prohibited hours and times on Sundays, Good Friday, Christmas Day, &c. 5 & 6 Vict. c. 44, s. 5.

P. 367, note (s). See *Brown v. Johnson*, 10 M. & W. 330.

P. 369. When goods lying at a wharf are sold, the vendor gives a delivery order to the *vendee*, who lodges it with the wharfinger; till that is done the wharfinger is responsible to the vendor for the goods, and they remain at the wharf in his name. The written order when delivered is the wharfinger's protection in suffering a new party to take possession; a mere verbal notice is not equivalent: no lien as against the vendor attaches for wharf charges on goods after a sale for which even a verbal notice has been given to the wharfinger. *Barry and another v. Longmore*, 12 Ad. & E. 639; 4 P. & D. 344.

P. 376. Tobacco is usually sold by samples, and until it is weighed at the Queen's beam, no samples can be obtained. The mode of selling tobacco warehoused in the London Docks is by delivery orders or dock warrants, at the option of the owner. A dock warrant is not only unnecessary for the purpose of effecting a sale of tobacco, but, where the quantity to be sold is large, it is unusual and inconvenient. A person in whose name goods are entered at the docks can obtain dock warrants or give delivery orders for them at his option. See *Hatfield and another v. Phillips and others*, in error in Exchequer Chamber, Hilary Term, 1842.

P. 406. The owner of cattle under the care of one of these licensed drovers, or even of their servant boys, is not liable for damage done by such cattle, the drover or his servant not being the servant of the owner, and it matters not whether the accident happened within the civic limits or not. *Milligan v. Wedge*, 12 Ad. & E. 737.

P. 415, note (i). The Exchange hour is now from three to four.

P. 435. A cheque is a written order on a banker signed by the customer, and resembling in many respects a bill of exchange. To exempt it from the stamp duty it must be dated on the day it is issued, and must specify and express the place where it was issued; it must be *drawn on a banker*, and the place where it is drawn must be within 15 miles of the banker's place of business, and it must not direct payment to be made by bills or notes, 9 Geo. IV. c. 40, s. 15: non-compliance with these regulations subjects the parties offending to severe penalties, and the cheque is void and inadmissible even as evidence of a debt, 55 Geo. III. c. 184, s. 13. See as to bankers' cheques generally, note 2, 2 M. & Rob. 404, and 3 Bur. 1517; *Down v. Halling*, 4 B. & C. 333; *Boyd v. Emmerson*, 5 A. & E. 184; *Kemble v. Mills*, 2 Scott's New Reports, 121.

P. 438. Short bills—see *Carstairs v. Bates*, 3 Camb. 301; *Ex parte Thompson, re Dilworth*, Montague & Ayr-

ton, 192; *Ex parte Bond, in re Foster*, Court of Bankruptcy, Law Journal, vol. xix. p. 18.

P. 439, note (h). If a bill, made payable at a banker's, be taken away from the drawer at the clearing house by such banker's clerk, and the acceptance cancelled with the intention of honouring it, the bankers have still till five o'clock to return the same, in case fresh instructions are received by them, and they are not liable in an action for cancelling the bill. *Warwick v. Rogers*, 6 Scott's N. R. 18.

P. 448. These brokers' notes are not evidence of a purchase above £20 between vendor and purchaser without a £1 agreement stamp, under the 55th Geo. III. c. 184. But between the broker and his principal, they are good evidence without a stamp; see *Josephs v. Pebrer*, 1 C. & P. 341.

As to sale of shares on the Stock Exchange, see *Humble v. Mitchell*, 11 Ad. & E. 205.

P. 449. The judgment in *Mortimer v. McCallan* has been affirmed in error, 11 Law Journal, N. S. Exchequer Chamber, 431.

P. 458. Lloyd's agents are usually appealed to as an authority, in cases of dispute between the underwriter and the assured, in adjusting a total loss, or settling an average, though their mere certificate of the quantum of the damage is not conclusive upon the former. *Drake v. Marriatt*, 1 B. & C. 473.

P. 468. The brokers in commercial sales very commonly send in the invoices in their own names, and as such are entitled to payment, particularly where they have advanced money to their principals. See *Jones v. Little-dale*, 6 Ad. & E. 486; *Warner v. McKay*, 6 M. & W. 591, and cases there cited.

P. 471. See *Scrimshire v. Olderton*, 2 Str. 1182.

P. 473. The returns under the Corn Regulation Acts are not conclusive evidence to show the parties to whom the corn is delivered. *Woodley v. Brown*, 2 Bingh. 527.

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THE
LONDON CORPORATION REFORM ACT,
1849.

THIS edition of the 12th and 13th Vict. c. 94, passed to regulate civic elections, and to amend the 11 Geo. I. c. 18, is intended as a Supplement to the Author's work on *City Law*, in compliance with an intimation already given (a), and reference is therefore occasionally made to that work, wherever lengthened comment on the very important legal points which the new act gives rise to, is here, for brevity's sake, avoided.

It is necessary at the outset of these observations to state, that the reader will here only find the *legal operation* of the new act discussed. No other questions which it may give rise to will be in any way commented on.

For convenience of reference and practical use, both of the acts are given *verbatim*; and the important points of corporation and city law, which they involve, will be found concisely discussed in the summary in the two next pages, and at greater length under the several sections that immediately give rise to them.

The new act is intituled "An Act to amend an Act passed in the eleventh year of the reign of King George the First, for regulating Elections within the City of

(a) See Practical Treatise on the 8vo. London, H. Butterworth, Fleet
Laws, Customs, Usages and Regula- Street. Preface to 2nd edition, p. iv.
tions of the City and Port of London.

“ London, and for preserving the Peace, good Order, and
 “ Government of the said City.”

It is chapter 94 of the *local and personal public acts* of the session 12 & 13 Victoria, and has operation from the 1st August, 1849, (the date of the royal assent).

It contains twelve sections or clauses.

The first section repeals so much of the 11th Geo. I., cap. 18, as regulates the right of voting, and the time of polling at wardmotes in the city of London.

The second confers the right of voting for aldermen, common councilmen, and ward officers.

The third orders the formation of the lists of electors.

The fourth regulates the service of summons upon freemen.

The fifth the qualification of common councilmen.

The sixth the period of polling at wardmotes.

The seventh and eighth set forth the declaration to be made by electors in lieu of the oath previously in force, and the punishment for false declarations.

The ninth provides for the disqualification of aldermen and common councilmen.

The tenth and eleventh regulate the declaration to be made by freemen, in lieu of oath or affirmation, on taking up the freedom.

And the twelfth declares the act to be a public act.

¶ *Summary of contents.*—To sum up concisely the operation of this act, it is, in some instances, a mere *repealing act*; repealing certain of the provisions of the 11 Geo. I., c. 18, without re-enacting any other. Thus it absolutely repeals sections 2 and 3 of the latter act (*b*) as to voters' oaths, and sections 9 to 12 (*c*) as to payment of rates (*d*). The new act is, in some other respects, a mere *enabling statute*, giving, in addition to rights conferred by previous law or custom, a new right. Thus section 5 creates a new

(*b*) Treatise on the Laws and Customs of London, p. 16, and *post*, pp. 21, 22.

(*c*) *Post*, pp. 26, 27.

(*d*) See *post*, p. 9, as to effect of this on the constituency.

species of qualification for common councilmen (*e*), which, however, does not appear to take away the qualifications recognized by the ancient law and custom of the city (*f*). But at the same time the present act introduces various positive regulations in the municipal constitution of the city, which entirely *alter* the old law, settling the qualification of electors at the wardmotes (*g*), the mode of making out the voters' lists (*h*), the mode of polling (*i*), the mode of service of summons, &c. (*k*), and the form of declaration in lieu of the oath on taking up the freedom (*l*), and voting at wardmote elections (*m*).

As the legal effect of some provisions of the act have already given rise to discussion, it may suffice to shortly allude here to the views taken by the author on the subject, put forth of course at this moment with diffidence, in the absence of any authority for them from the courts at Westminster, or the law officers of the corporation.

The four *vexatæ questiones* appear to be, 1st. Whether under the 2nd and 5th sections it is necessary for electors and common councilmen to *be registered* in the register of voters *in respect of the premises from which their qualification is derived*? This question is here answered in the negative (*n*), thus getting rid of a difficulty which would disfranchise many of the higher class of citizens, who are registered as liverymen. 2ndly. From what source are the freemen occupiers' lists to be made out? This the author has disposed of by suggesting that, as the lists under the act are to be in *force for a whole year*, from the 1st of November, *all the names should be inserted who have a qualification during any part of the year*, viz. both those on the parliamentary register, expiring on the 1st of December (*o*),

(*e*) *Post*, p. 13.

(*f*) See Treatise on the Laws, &c. of London, p. 40.

(*g*) *Post*, p. 8.

(*h*) *Post*, p. 11.

(*i*) *Post*, p. 15.

(*k*) *Post*, p. 13.

(*l*) *Post*, p. 17.

(*m*) *Post*, p. 16.

(*n*) See *post*, p. 9.

(*o*) See *post*, p. 13.

and those on the new register, coming in force on that day. 3rdly. Can any election be valid previous to the 1st November, 1849? This, although of comparatively small practical importance, involves some important legal principles. The author conceives, that, as the 3rd and 7th sections of the act would not legally be construed to come into operation until the 1st November (*p*), the old constituency (revived by the repeal of the 11 Geo. I. c. 18) are in the interim legally entitled to vote together with those qualified by the 2nd section of the new act, without being required to take any oath that their names are on the *occupiers' list*, &c. (*q*) Lastly, does the qualification for common councilmen, conferred by the 5th section, exclude other qualifications, derived from the old law and custom of the city? Authorities are here cited to show that it *does not* (*r*); and it will be seen also, that but for the oath prescribed by the 7th section, the same reasoning would apply generally to the qualification of electors (*s*), as the new act, unlike the 11 Geo. I. c. 18, contains, in both the 2nd and 5th sections, only *affirmative words* (*t*).

The preamble and 1st section of the act we are considering, are in these words:—

Preamble re-
cites 11 Geo. I.
c. 18.

“Whereas, by an act passed in the eleventh year of the reign of his Majesty King George the First, intituled ‘An Act for regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City,’ it was enacted, that the right of election of aldermen and common councilmen for the several and respective wards of the said city should belong and appertain to freemen of the said city of London, being householders, paying scot as therein after mentioned and provided, and bearing lot when required in their several and respective wards, *and to none other whatsoever*: Provided nevertheless, that the houses of such householders be respectively of the true

(*p*) See *post*, p. 11.

(*q*) See *post*, p. 9.

(*r*) See *post*, p. 14.

(*s*) See *post*, p. 9.

(*t*) See *post*, p. 14.

“ and real value of ten pounds a year at the least, and
 “ that such householders be respectively the sole occu-
 “ piers of such houses, and have been actually in posses-
 “ sion respectively of a house of such value, in the ward
 “ wherein the election is made, by the space of twelve
 “ calendar months next before such election :

“ And whereas it is expedient that the right of voting
 “ in the election of aldermen and common councilmen
 “ for the several and respective wards of the said city
 “ should be extended and enlarged, and that the said
 “ recited act should be altered and amended :”

“ May it therefore please your Majesty, that it may be
 “ enacted, and be it enacted, by the Queen’s most excel-
 “ lent Majesty, by and with the advice and consent of the
 “ Lords spiritual and temporal, and Commons, in this pre-
 “ sent parliament assembled, and by the authority of the
 “ same, that *so much of the said recited act as regulates*
 “ *the right of voting in elections of aldermen and common*
 “ *councilmen for the several and respective wards of the*
 “ *city of London, and the time at which the polling at such*
 “ *elections shall commence, and the period during which it*
 “ *shall continue, shall be and the same is hereby repealed.*”

SECT. I.
 Repeal of so
 much of 11
 Geo. I. c. 18,
 as regulates the
 right of voting
 and the time of
 polling at ward-
 motes.

The effect of this clause is to repeal, from the 1st of August, 1849, the following portions of the 11 Geo. I. c. 18, viz. the latter part of section 1, as to the electors’ oath (*u*) ; part of section 4, as to the time of polling (*x*) ; sections 7, 8, 10, 11, 12, and part of 14, as to the qualification of electors (*y*). The other clauses, relating to *common-hall* elections (*z*), and to the mode of polling and taking the scrutiny (*a*), remain in force ; and inasmuch as the repealed act took away the electors’ qualification derived from ancient custom (*b*), the present act revives it wherever language is not adopted sufficient to exclude it ; but this customary qualification seems to be put an end to

(*u*) Treatise, p. 16 c, d, *post*, p. 21. 61 e, g, l.

(*x*) *Post*, p. 22, 23.

(*y*) *Post*, pp. 25, 26, 28.

(*z*) 11 Geo. I. c. 18, ss. 1, 6 and
 14, *post*, pp. 19, 25, 28 ; Treatise, p.

(*a*) 11 Geo. I. c. 18, ss. 4 and 5,
post, pp. 22—24.

(*b*) See the clause, Treatise, p.
 16 b, *post*, 25.

on the 1st November, 1849, when the list of freemen occupiers is made out, on and after which day it is not only necessary that the voter should be otherwise legally qualified, but in a situation to swear that he is *on the list of freemen occupiers (b)*, entitled to vote, made out in compliance with the 2nd and 3rd sections.

The right of voting at ward elections is conferred in these words by the second section :—

SECT. II.
Right of voting
for aldermen,
common council-
men, and ward
officers.

“ And be it enacted, that at *every election (c) for alderman or common councilman, or ward officer*, for any ward in the city of London, *every freeman* of the said city (not subject to any legal incapacity) who shall occupy within the said city or the liberties thereof, either solely or jointly with any other person or persons, any house, warehouse, counting-house, office, chambers or shop, and shall, in the case of a sole occupation, be rated in respect of such premises, in his own name, to an amount not less than ten pounds per annum, or, in the case of a joint occupation, be rated in the joint names of the occupiers, to an amount which when divided by the number of occupiers shall give a sum of not less than ten pounds per annum for each and every such occupier, to the police or any other rate, and *who shall be registered in the register of voters* for the city of London in use at elections for members to serve in parliament, and *then in force in respect to such premises*, shall be ENTITLED TO VOTE in any such election for alderman or common councilman, or ward officer, in the ward in which such premises shall be situate.”

As already observed, the 11 Geo. I. c. 18, is only partially repealed by section 1, and except so far as the present act expressly provides for the contrary, the old statute and customary law remains in force. This clause, of course, operates from the date of the royal assent, 1st August, 1849; and inasmuch as the 7th section requires every voter to declare that his name is on a certain list, which, by the 3rd section, is directed to be made out on the 1st November, some anxiety has been expressed as to

(b) See *post*, p. 16.

(c) See as to claims of Court of Aldermen at their elections, *Treatise*, p. 33.

the legality of any election of ward officers taking place in the interval. Now as the 2nd section confers the *immediate* right of voting on a certain class, but does not expressly exclude any other class qualified by law or custom, and it is impossible that the declaration in the 7th section can be taken until after the 1st November, 1849, the clause itself, according to legal construction, could only operate from that date, and all elections previously made by persons qualified merely by the 2nd section, or by the old customary law of the city (*d*), would seem to be valid.

After the 1st November, 1849, the franchise would seem to be confined to those who derive their qualification under the 2nd section, which we are now considering, for the list directed to be made out in section 3 is confined to those so qualified (*e*); and unless on the list the vote is by section 7 declared invalid.

It remains to say a word or two on the subject of the qualification which this section prescribes. From the language of the present section it has been argued that those only are qualified whose names are on the Parliamentary Register *in respect of the premises from which their qualification is derived*. This construction would disfranchise all those whose names appear on the Parliamentary Register with any other than a mere *occupation qualification*, under section 13 of the 6 Vict. c. 18, and, of course, take away the qualification both for electors and common councilmen, conferred by the present act, from all those whose names are on the Parliamentary Register as freemen and liverymen, contrary to the obvious intent of both statutes. The correct mode of expressing the intention of the legislature, to thus confine the qualification under the present act, would have been to have inserted the words "in respect of such premises" after the word "registered," and not where they are at present

(*d*) See Treatise, Ch. V.

(*e*) See *infra*, p. 8.

inserted. The proper construction of the clause in its present form appears to the author to be to read "then in force in respect of such premises" as one sentence: and applicable to the *Register* and not to the description of the qualification in the Register. The Register for the city of London is an entire document, and is in force for the whole city, including both occupiers and liverymen; but even in the case of a liveryman, it includes the street, lane or other description of his place of abode (*f*).

Even, however, if the words "in respect of such premises" must, in order to support this construction, be deemed to have no meaning, yet the courts would not, it seems, supply the defective phraseology of the legislature, in order to give them a meaning (*g*).

The question is of further importance than merely as regards the right of voting at all. If the construction here contended for is correct, a party registered in any capacity on the city of London Register, may exercise the vote, under section 2 of this act, in every ward where he has an occupation qualification.

The section itself only furnishes one other qualification in addition to being a freeman, viz. the being rated for the police or any other rate as a 10*l.* occupier. The repealed act contained a whole list of rates which the voter must have *paid* (*h*), but as the voter must also be on the *Parliamentary Register*, the section impliedly requires payment of the rates and taxes specified in the Reform

(*f*) See form Schedule C. No. 1, to 6 Vict. c. 18.

(*g*) "We are bound," said Lord Denman in *Green v. Wood*, "to give to the words of the legislature all possible meaning which is consistent with the language used. But if we find language used is incapable of a meaning, we cannot supply one. It is true that we have here words which as they stand are useless, a circumstance perhaps not altogether unprecedented.

Those who used the words thought that they had effected the purpose intended. But we, looking at the words as judges, are no more justified in introducing that meaning, than we should if we added any other provision; we can do no more than give such a meaning as the words authorize." 7 Queen's Bench Reports, p. 185.

(*h*) See *post*, p. 26; and Treatise, p. 16 i.

Act (i). Several classes of persons are, however, disqualified from voting for members of parliament whose names may yet be on the register, and render their votes good at a wardmote, e. g. persons employed in the revenue (k), police magistrates (l), policemen or officers (m), &c.

The 3rd section provides a *List of Electors* :—

“ And be it enacted, that on the first day of November in every year, the alderman and common councilmen of each ward shall make or cause to be made out an alphabetical list of all persons *who shall be entitled to vote as freemen occupiers* under this act, such list to be duly signed by the alderman of the ward; and the ward-clerk shall keep a true copy of such list, to be perused by any person, without payment of any fee, at all reasonable hours between the first and fifteenth days of November in every year, and shall at all times deliver a written or printed copy of such list to any person requiring the same, on payment of a reasonable price for each copy; and the said list shall be *the list of freemen occupiers entitled to vote*, after the passing of this act, at any election for alderman or common councilman or ward officer for any ward.”

SECT. III
For providing
lists of electors.

No provision is made, as in the Municipal Corporations Act (n), for defraying the expenses of the electors' lists, and probably the ward clerks, on whom the real duty of preparing the lists will devolve, may be remunerated under the express provisions of some future Act of Common Council.

The list is directed to contain the names of persons entitled to vote as *Freemen Occupiers*, i. e. those who are qualified under the 2nd section of the act. Questions have already arisen as to the proper source from which the list is to be made out, the act itself being silent on the subject. The list directed by this clause, it will be observed, must be made out on the 1st of November, and the parliamentary

(i) 2 Will. IV. c. 45, s. 27.

(l) 10 Geo. IV. c. 44, s. 18.

(k) 22 Geo. III. c. 41, s. 1. See
51 Geo. III. c. 84.

(m) 3 Will. IV. c. 19, s. 19; 2 & 3
Vict. c. 94, s. 8.

(n) 5 & 6 Will. IV. c. 76, s. 24.

register of voters need not be made out before the 30th of November, and remains in force during the whole succeeding twelve months (*o*); so that in an election for alderman, &c. previous to the 1st of December in any year, those freemen occupiers only can vote who are on the register of the preceding year, and after the 1st of December, only those can vote who are on the new register. It would be comparatively easy for the secondaries, with the aid of the revising barrister, and the exercise of great expedition, to make out the register in each year in such a manner as to enable the freemen occupiers' lists to be corrected by it (*p*); but if this were not practicable, the law which, it is said, "*neminem cogit ad impossibilia*," would seem clearly to justify the ward authorities in making out the list from the best information they can obtain. The new act does not, indeed, require the freemen voters' list to be made out *from the register*, but only to contain the names of persons entitled to vote, leaving the onus of qualifying himself by

(*o*) 6 Vict. c. 18, s. 49, "that the said printed book or books so signed as aforesaid by the clerk of the peace or town clerk respectively, and given into the custody of the sheriff of any county or the returning officer of any city or borough, as the case may be, shall be the register of persons entitled to vote at any election of a member or members to serve in parliament which shall take place in and for the same county, city or borough respectively, between the last day of November in the year wherein such register shall have been made and the first day of December in the succeeding year."

(*p*) The revising barrister's courts are directed to be held between the 15th September and the last day of October; and then it is provided, that "the lists of voters for each city or borough, signed as aforesaid, shall be forthwith delivered by the revising

barrister to the town clerk of the same city or borough; and the said town clerk shall *forthwith* cause the said lists to be copied and printed in a book, and in the said book the said lists shall be arranged and every name numbered according to the directions aforesaid with regard to the county lists, so far as the same are applicable; and the said town clerk shall sign and deliver the said book *on or before* the said last day of November to the returning officer of the same city or borough, to be by him and his successors as returning officer safely kept for the purpose hereinafter mentioned." 6 Vict. c. 18, s. 48. Thus if the revising barrister's courts are over by the 14th October, the new register might legally be completed in time to enable the ward clerks to make out the ward lists correctly.

both the register and the freemen occupiers' list on the voter himself at the time of election.

The list should therefore, it would seem, contain the names of all freemen occupiers whose names being on the old register have not been expunged by the revising barrister; but in order to meet the event of an election occurring in the month of November, the list should also contain the names of those who, having been on the old register continue to enjoy the legal qualification of freemen occupiers.

This mode of making up the list of freemen occupiers appears indeed incumbent on the ward authorities. The list is directed to contain the names of every person legally qualified under the act (g); and if the name of any such party be omitted, he would, it seems, have a ground of action against the ward officers (r).

The fourth section provides for the mode of service of summons on freemen, &c. :—

“ And be it enacted, that the service at such house, warehouse, counting-house, office, chambers or shop, of any summons to pay scot, or bear lot, or execute any office, shall be good service upon any freeman, and be deemed good and sufficient notice to him.”

SECT. IV.
Service of summons upon freemen.

The fifth introduces a new qualification for common councilmen :—

“ And be it enacted, that every freeman of the said city (not subject to any legal incapacity) who shall occupy within the said city or the liberties thereof, either solely or jointly with any other person or persons, any house, warehouse, counting-house, office, chambers or shop, and shall, in the case of a sole occupation, be rated in respect of such premises, in his own name, to an amount not less than ten pounds per annum, or, in the case of a joint occupation, be rated in the joint names of the occupiers, to an amount which when divided by the number of occupiers shall give a sum of not less than ten pounds per annum for each and every such occupier, to the police

SECT. V.
Qualification of common councilmen.

(g) *Supra*, sect. 2, *ante*, p. 11. 938; *Pryce v. Belcher*, 16 Law Journ. (N. S.) C. P. 264.
(r) *Ashby v. White*, 2 Lord Raym.

“or any other rate, and who shall be registered in the register of voters for the city of London in use at elections for members to serve in parliament, and then in force in respect to such premises, shall be capable of being elected a common councilman for the ward in which such premises shall be situate, any law, custom or usage to the contrary thereof in anywise notwithstanding.”

The questions as to the nature of the qualification here conferred are discussed under the second section, which prescribes the qualification for electors(*s*); but as there is nothing said about a *list* of persons qualified under this clause, the only requisites for the qualification are that the party should be a freeman, having the occupation, and being rated according to the act, and that he is on the parliamentary register in force *at the time of being elected*, viz. if elected before 1st December on the old register, if after, on the new, which comes into operation from that day (*t*). The construction of the words *then in force in respect to such premises* will be found discussed in a previous page (*u*). As, however, the section we are considering merely confers a qualification in affirmative words, it will not have the effect of taking away previous qualifications for common councilmen derived from the old law and custom of the city (*x*). For instance, any freeman of London qualified as a *householder* of a ward, without actual residence, or being rated, could, it seems, be still elected (*y*).

No length of occupation or possession of the freeman is prescribed by the present act, and the qualification seems, therefore, to be complied with if the party be at the moment

(*s*) See *ante*, pp. 9, 10.

(*t*) See *ante*, 12.

(*u*) See *ante*, p. 10.

(*x*) See Treatise, p. 3, 16, and Vin. Abr. stat. E. 10, and *Reg. v. Mayor of London*, 16 Law Journ. 185; 11 Law Times, p. 271.

(*y*) See as to the custom, Treatise, p. 40. The qualification of a householder may, according to Lord Tenterden, be obtained, by being a tenant or holder of a dwelling-house, sleeping either by a servant or partner in such house, and being in the habit, for the

of election a *bonâ fide* occupier, rated on the police rate-books, and a freeman of the city (z).

“ And be it enacted, that whenever a poll shall be demanded at any election for alderman or common councilman, or ward officer, for any ward within the said city, the polling shall commence at ten o'clock in the forenoon of the day next following the day fixed for the election; and the polling shall continue during such one day only, and such poll shall not be kept open later than four o'clock in the afternoon of such polling day: provided always, that when such day next following the day fixed for the election shall be Sunday, Good Friday, or Christmas-day, then, in case it be Sunday, the poll shall be on the Monday next following, and in case it be Good Friday then on the Saturday next following, and in case it be Christmas-day then on the next following day if the same shall not be Sunday, and if it be Sunday then on the next following Monday: provided also, that in cases where the Lord Mayor for the time being shall, by reason of the illness, absence, or other incapacity of any alderman of the said city, be required to hold a poll in more than one ward on the same day, it shall be lawful for the said Lord Mayor to appoint such day, although the same may not be the day next following the day on which a poll shall be demanded, as he shall think proper for taking the poll in each such ward; and every poll which shall be taken on the day so appointed by the said Lord Mayor shall be as valid and effectual as if the same were taken on the day next following the day on which it shall have been demanded.”

SECT. VI.
Period of polling
at wardmotes.

This clause remedies considerable inconveniences in the mode of polling under the old law. With regard to the scrutiny, &c., however, the 11 Geo. I. c. 18, s. 4, still remains in force.

purposes of business, of resorting to each dwelling-house, or to some of the buildings connected with it. See *Rex v. Hall*, 1 Barn. & Cress. 138. The term householder used in the repealed act has been treated by the

city law officers with greater strictness. See the Treatise, 16 h, Report of Bread Street Ward Scrutiny, p. 96.

(z) See Treatise, 16 h, note (e). As to what constitutes the freedom, see *id. ib.* pp. 62, 63.

SECT. VII.
Declaration to
be made by
electors in lieu
of oath.

“ And be it enacted, that instead of the oath required
“ by the said recited act to be taken by any person before
“ he is admitted to poll at any election of any alderman
“ or common councilman, every person, *before he is ad-*
“ *mitted to poll at any election* for alderman or common
“ councilman, or ward officer, for any ward in the city of
“ London, shall make the declaration hereinafter men-
“ tioned ; that is to say,

“ ‘ I do declare, that I am a freeman of London and an
“ ‘ occupier of premises in the ward of and that I
“ ‘ have not polled before at this election, and that I am
“ ‘ on the list of freemen occupiers entitled to vote for the
“ ‘ ward of .’

“ And if any person shall refuse or neglect to make the
“ declaration hereby appointed to be made, then and in
“ every such case the poll or vote of such person so neg-
“ lecting or refusing shall be and the same is hereby de-
“ clared to be null and void, and as such shall be rejected
“ and disallowed.”

SECT. VIII.
Punishment for
false declara-
tion.

“ And be it enacted, that if any person making any such
“ declaration as hereinbefore is mentioned shall wilfully,
“ falsely and corruptly declare any matter or thing which,
“ if the same had been sworn in the usual form would
“ have amounted to wilful and corrupt perjury, every such
“ person so offending shall incur and be subject to the
“ same penalties and forfeitures as by the laws and sta-
“ tutes of this kingdom are or may be enacted or provided
“ against persons convicted of wilful and corrupt per-
“ jury.”

The effect of these provisions, it has been already ob-
served, is to absolutely confine the qualification of the
electors to those who are on the occupiers list under
sect. 3.

SECT. IX.
Disqualification
of aldermen and
common coun-
cilmen.

“ And be it enacted, that if any person holding the
“ office of alderman or common councilman for the city
“ of London shall declare himself or shall be declared
“ bankrupt or insolvent ; or shall apply to take or shall
“ take the benefit of any act for the relief of insolvent
“ debtors ; or shall make any composition with his cre-
“ ditors ; or shall altogether absent himself from his duty

“ for more than six calendar months consecutively, unless
 “ prevented by illness or other reasonable cause; or shall
 “ be convicted of fraud or of any crime, then and in
 “ every or any such case such person shall thereupon
 “ immediately become disqualified, and shall cease to hold
 “ the office of alderman or common councilman, as the
 “ case may be, and the court of mayor and aldermen of
 “ the city of London shall thereupon forthwith adjudge
 “ the said office to be vacant; but any person becoming
 “ disqualified, and ceasing to hold such office, by reason
 “ of having made any composition with his creditors, shall,
 “ on payment of his debts in full, be capable (if otherwise
 “ qualified) of being re-elected to such office: provided
 “ always, that any act done by any such alderman or com-
 “ mon councilman so becoming disqualified as aforesaid,
 “ previously to his office being adjudged by the said court
 “ of mayor and aldermen to be vacant shall have the same
 “ force and validity as if such alderman or common coun-
 “ cilman had not been so disqualified.”

*Proviso as to
acts done.*

“ And be it enacted, that in lieu of the oath or affirm-
 “ ation which every person being or becoming free of
 “ the city of London is upon taking up his freedom now
 “ obliged to take, every such person shall make and sub-
 “ scribe, before the same parties by whom the said oath or
 “ affirmation is now required to be administered, a solemn
 “ declaration in the form or to the effect following; that
 “ is to say,

SECT. X.
Declaration to
be made by
freemen in lieu
of oath or
affirmation, on
taking up the
freedom.

“ ‘ I, A. B., do solemnly declare, that I will be good and
 “ ‘ true to our sovereign lady Queen Victoria; that I will
 “ ‘ be obedient to the mayor of this city; that I will main-
 “ ‘ tain the franchises and customs thereof, and will keep
 “ ‘ this city harmless in that which in me is; that I will
 “ ‘ also keep the Queen’s peace in my own person; that I
 “ ‘ will know no gatherings nor conspiracies made against
 “ ‘ the Queen’s peace, but I will warn the mayor thereof,
 “ ‘ or hinder it to my power: and that all these points
 “ ‘ and articles I will well and truly keep according to the
 “ ‘ laws and customs of this city to my power.’ ”

“ And be it enacted, that the making and subscribing
 “ any such declaration shall confer upon and shall entitle
 “ the person making and subscribing the same to the
 “ same rights and privileges as he would have been en-
 “ titled to, and shall subject him to the same pains, penal-

SECT. XI.
Declaration to
have the same
effect as taking
the freeman’s
oath.

C

“ ties and forfeitures as he would have been subject to, in
“ case he had taken the oath usually taken by persons
“ upon taking up their freedom ; and shall have the same
“ force and effect in law and according to the customs of
“ the city of London as the taking of the freeman’s oath
“ now hath, and shall be deemed and taken to be a com-
“ pliance with the custom of the said city, as fully and
“ effectually as if the said oath had been taken.”

SECT. XII.
Public act.

“ And be it enacted, that this act shall be a public act,
“ and shall be judicially taken notice of as such.”

CITY ELECTION ACT,

1724.

** * * To render the legal operation of the new Act for regulating City Elections more intelligible, it has been deemed advisable to subjoin here the 11 Geo. I., c. 18, which it professes to alter and amend.*

Passages included between brackets thus [] are repealed. Those in italics, without brackets, are altered by subsequent statutes. "Com." is a reference to the preceding comments; "Treatise", to the Author's general work on the Laws and Customs of the City.

11 GEO. I. CAP. XVIII.

An Act for regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City.

WHEREAS of late years great controversies and dissensions have arisen in the city of London at the elections of citizens to serve in parliament, and of mayors, aldermen, sheriffs, and other officers of the said city; and many evil-minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens, and presumed to give their votes at such elections, in manifest violation of the rights and privileges of the citizens, and of the freedom of their elections, and to the disturbance of the public peace: And whereas great numbers of wealthy persons, not free of the said city, do inhabit and carry on the trade of merchandize and other employments within the said city, and refuse or decline to become freemen of the same by reason of an ancient custom within the said city restraining the freemen of the same from disposing of their personal estates by their last wills and testaments: And whereas great dissensions have arisen between the aldermen and commons of the common council of London in or concerning the making or

passing of acts, orders, or ordinances in common council, which, if not timely settled and determined, may occasion great obstructions of the public business and concerns of the said city, and create many expensive controversies and suits at law, and be attended with other dangerous consequences: Now to the intent that suitable remedies may be provided for preserving the privileges of the city of London, and the freedom of elections therein, and for settling the right (a) of such elections, and putting a stop to the aforesaid controversies and dissensions, and the ill consequences of the same, and that a constant supply may be had of able officers, capable of supporting the dignity of and maintaining good order and government within that ancient, populous, and loyal city, which is of the greatest consequence to the whole kingdom; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That at all times from and after the first day of June, in the year of our Lord one thousand seven hundred and twenty-five, *upon every election of a citizen or citizens to serve for the said city of London in parliament (b)*, and upon all elections of mayors, sheriffs, chamberlains, bridgemasters, auditors of chamberlains' and bridgemasters' accounts, and all and every other officer and officers to be chosen in and for the said city by the liverymen thereof, and upon all elections of aldermen and common councilmen chosen at the respective wardmotes of the said city, the presiding officer or officers at such elections shall, in case a poll be demanded by any of the candidates, or any two or more of the electors, appoint a convenient number of clerks to take the same; which clerks shall take the said poll in the presence of the presiding officer or officers, and be sworn by such officer or officers truly and indifferently to take the same, and to set down the name of each voter, and his place of residence or abode, and for whom he shall poll; and to poll no person who shall not be sworn, or, being a Quaker, shall not affirm according to the direction of this act; and every person before he is admitted to poll at any election of any citizen or citizens to serve in parliament, or of any officer or officers usually chosen by the livery-

On all elections by the liverymen, and at the wardmotes, presiding officer to appoint a convenient number of clerks to take the poll, &c.

None to be polled who is not sworn.

(a) See Treatise, p. 16 b, note (e).

(b) Compare 2 Will. 4, c. 45, ss. 27, 32.

men of the said city as aforesaid, shall take the oath hereinafter mentioned, or, being one of the people called Quakers, shall solemnly affirm the effect thereof; that is to say,

“ You do swear, that you are a freeman of London, and a liveryman of the company of _____, and have so been for the space of twelve calendar months; and that the place of your abode is at _____, in _____, and that you have not polled at this election. Liverymen's oath at elections.
So help you God.”

[And in case of any election of any alderman or common councilman, every person, before he is admitted to poll, shall take the oath hereinafter mentioned, or, being one of the people called Quakers, shall solemnly affirm the effect thereof; that is to say,

“ You do swear, that you are a freeman of London, and an householder in the ward of _____, and have not polled at this election. Oath at ward-motes.
So help you God.” (c)]

And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or, being a Quaker, shall refuse or neglect to make such solemn affirmation as aforesaid, then and in every such case the poll or vote of such person or persons so neglecting or refusing shall be and the same is hereby declared to be null and void, and as such shall be rejected and disallowed. On refusal to swear, poll to be rejected.

II. And be it further enacted, by the authority aforesaid, That at all times from and after the said first day of June, in the year of our Lord One thousand seven hundred and twenty-five, upon every election of such citizen or citizens, officer or officers, by the liverymen of the said city, and upon every election of such officer or officers at any wardmote of the said city as aforesaid, all and every person and persons having a right to vote or poll at such election or elections shall, before he be admitted to vote or poll thereat, (if required by any of the candidates, or any two or more of the electors,) first take the oaths in and by an act made in the first year of his majesty's reign, intituled “ An Act for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and The oaths in an act of 1 Geo. 1, c. 13, to be taken, if required.

(c) Repealed, 12 & 13 Vict. c. 94, s. 7, *ante*, p. 16.

Presiding officer and sworn clerk to administer the oaths, on penalty of sixty pounds.

for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors," appointed to be taken, or, being one of the people called Quakers, shall, if required as aforesaid, solemnly affirm the effect thereof; and if any person or persons shall, being required thereunto as aforesaid, refuse or neglect to take the said oaths by the said act appointed to be taken, or to affirm the effect thereof as aforesaid, that then the poll or vote of such person or persons so neglecting or refusing shall be and the same is hereby declared to be null and void, and as such shall be rejected and disallowed; and the presiding officers at all and every the respective elections aforesaid, and such sworn clerks as shall be by them appointed, are hereby respectively authorized and empowered to administer the above-mentioned oaths and affirmations; and if any such presiding officer or officers, sworn clerk or clerks, shall neglect or refuse so to do, or shall otherwise offend in the premises, contrary to the true intent and meaning of this act, every such officer and sworn clerk shall for every such offence forfeit the sum of sixty pounds of lawful money of Great Britain, besides costs of suit.

Penalty on falsely taking the oaths, or suborning.

III. And it is hereby further enacted, That if any person or persons shall wilfully, falsely, and corruptly take the said oaths or affirmations set forth and appointed in and by this act, or either of them, and be thereof lawfully convicted by indictment or information; or if any person or persons shall corruptly procure or suborn any other person to take the said oaths or affirmations, or either of them, whereby he shall wilfully and falsely take the said oaths or affirmations, or either of them, and the person so procuring or suborning shall be thereof convicted by indictment or information; every person so offending shall for every such offence incur and suffer such penalties, forfeitures and disabilities, as persons convicted of wilful and corrupt perjury at the common law are liable unto.

Presiding officer how to act if a poll be demanded.

IV. And to the intent that the poll at every such election may be expeditiously and duly taken, be it further enacted, by the authority aforesaid, That if a poll shall be demanded (d) *at any of the elections before mentioned* (e) after the said first day

- (d) See Treatise, p. 16 c, note (a). *contra*, 12 & 13 Vict. c. 94, s. 6,
 (e) See as to wardmote elections *ante*, p. 15.

of June, in the year of our Lord One thousand seven hundred and twenty-five, the presiding officer or officers at such election shall begin such poll the day the same shall be demanded, or the next day following at furthest, unless the same shall happen on a Sunday, and then on the next day after, and shall duly and orderly proceed thereon from day to day (Sundays excepted) until such poll be finished, and shall finish the poll at elections by the liverymen within seven days, exclusive of Sundays, [and the poll at the wardmote within three days, exclusive of Sundays (*f*),] after the commencing the same respectively; and shall, upon adjourning the poll on each day at all and every the elections aforesaid, seal up the poll books with the seals and in the presence of such of the respective candidates, or persons deputed by them, as shall desire the same, and the said poll books shall not be opened again but at the time and place of meeting in pursuance of such adjournment; and after the said poll is finished the said poll books, being sealed as aforesaid, shall within two days after be publicly opened at the place of election, and be duly and truly cast up, and within two days after such casting up, the numbers of the votes or polls for each candidate shall be truly, fairly, and publicly declared to the electors at the place of election by the officer or officers presiding at such election; and if a scrutiny shall, upon such declaration made, be lawfully demanded (*g*), the same shall be granted and proceeded upon, and the respective candidates shall immediately nominate to the presiding officer or officers at such elections any number of persons qualified to vote at such election, not exceeding six, to be scrutineers for and on behalf of the candidate or candidates on each side, to whom the presiding officer or officers at such elections shall, within six days next after such scrutiny shall be demanded, upon request and at the charge of the candidate or candidates, or any the scrutineers on his or their behalfs, deliver or cause to be delivered to him or them a true copy, signed by such officer or officers, of the poll taken at such election; and all and every the scrutinies to be had or taken upon any election to be made by the liverymen of the said city shall begin within ten days after the delivery of the

When the poll
to be finished,
&c.

If a scrutiny be
demanded,
scrutineers not
to exceed six on
each side.

Scrutinies
when to begin,
and when
finished, on
election, by
liverymen.

(*f*) Repealed, 12 & 13 Vict. c. 94,
s. 6, *ante*, p. 15.

(*g*) See as to this, Treatise, p. 16 *f*,
note (*c*).

Scrutinies on
elections at
wardmotes.

True copies of
the objections
against the
pollers.

Penalty two
hundred pounds,
with costs.

A true list to
be given of the
voters dis-
allowed.

copies of the said polls, and be proceeded on day by day (Sundays excepted), and shall be finished within fifteen days after the commencement of such scrutiny; and thereupon the presiding officer or officers shall within four days after the finishing such scrutiny publicly declare at the place of such election which of the candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and on the election of any officer or officers at the respective wardmotes of the said city, if a scrutiny be demanded, the candidates, or scrutineers nominated on their behalfs respectively, shall, within ten days next after the receipt of the copy or copies of the polls taken at such election, deliver or cause to be delivered to the presiding officer or officers the names in writing of the several persons who have polled in the said election against whose votes they shall object, with the particular objections against each respective name; and the presiding officer or officers shall thereupon, within three days then next following, at the request and charges of any candidate or candidates, or the scrutineers named on his or their behalfs, deliver or cause to be delivered to him or them one or more true copy or copies (signed as aforesaid) of the paper containing such names and objections as aforesaid; and the said presiding officer or officers, within ten days then next following (exclusive of Sundays), after having fully heard such of the said candidates as shall desire the same, or some person appointed by him or them, touching such objections, shall, at or in the place of election, openly and publicly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and if the said presiding officer or officers, or any other person or persons, shall offend in the premises, every such offender shall forfeit for every such offence the sum of two hundred pounds of lawful money of Great Britain, with full costs of suit, over and above all other penalties and forfeitures inflicted by any other act or acts of parliament.

V. And be it further enacted by the authority aforesaid, That after any election made and scrutiny taken as is hereinbefore provided and directed, the presiding officer or officers at such election and scrutiny shall deliver, under his or their hand or hands, a true list of the voters by him or them disallowed

upon such scrutiny to any of the candidates who shall, upon the final declaration of the election as aforesaid, demand the same, within six days after such demand made, such candidate paying for the same: provided always, that no such list as is hereby directed to be given, nor anything therein contained, shall be admitted to be given in evidence on any action or occasion whatsoever.

VI. And be it further enacted by the authority aforesaid, That the mayor of the city of London for the time being, upon request to him made by any candidate or candidates, his or their agent or agents, at any election of a citizen or citizens to serve in parliament for the said city, or of a mayor, or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the masters and wardens of the livery companies of the said city respectively to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies, and the said clerks shall return such their respective lists upon oath within three days after the receipt of any such precepts; one of which lists so returned the said mayor shall and he is hereby required forthwith to deliver or cause to be delivered to the candidate or candidates on each side at such election, or to his or their agent or agents respectively.

Mayor to issue precepts to the companies to bring in lists.

[VII. And whereas divers controversies and disputes have arisen in the said city of London touching the right of election of aldermen and common councilmen for the respective wards of the said city: for quieting all such disputes and controversies for the future, it is hereby further enacted by the authority aforesaid, That from and after the said first day of June in the year of our Lord one thousand seven hundred and twenty-five the right of election of aldermen and common councilmen for the several and respective wards of the said city shall belong and appertain to freemen of the said city of London being householders paying scot as hereinafter is mentioned and provided, and bearing lot when required in their several and respective wards, and to none other whatsoever (h).]

Election of aldermen and common councilmen to be by freemen paying scot and lot;

[VIII. Provided nevertheless, That the houses of such house-

and paying 10l. per annum rent.

(h) Repealed, 12 & 13 Vict. c. 94, s. 2, *ante*, p. 8.

holders be respectively of the true and real value of ten pounds a year at the least, and that such householders be respectively the sole occupiers of such houses, and have been actually in the possession respectively of a house of such value in the ward wherein the election is made by the space of twelve calendar months next before such election (h).]

The scot ascertained.

IX. *Provided also, and for the better ascertaining what are the rates and taxes to which such householders ought to contribute and pay their scot, the same are hereby declared and enacted to be a rate to the church, to the poor, to the scavenger, to the orphans, and to the rates in lieu of or for the watch and ward, and to such other annual rates as the citizens of London inhabiting therein shall hereafter be liable unto, other than and except annual aids granted or to be granted by parliament; and in case any such householder, within the space aforesaid, shall have been rated and charged and contributed and paid his scot to all the said rates or taxes, or thirty shillings a year to all or some of them, except as aforesaid, every such person shall be deemed and taken to be a person paying of scot (i).*

Householder paying 30s. a year in all may vote.

Partners in trade may vote, each paying 10*l.* per annum rent.

[X. *Provided always, That such householder, within the space aforesaid, shall have been rated or charged, and contributed or paid his scot, to all and singular the rates and taxes (other than and except annual aids granted by parliament) whereunto the citizens of London inhabiting therein are or shall be liable, or shall have paid in the whole to the said rates and taxes, or some of them, except as aforesaid, thirty shillings a year at least; and in case any two or more partners carry on a joint trade in any such house together, and shall have been householders of such house by such space of time as aforesaid, such partners shall, paying their scot in manner aforesaid, and bearing their respective proper lots, if required, have votes at the elections aforesaid, so as such house wherein such partners carry on their trade be of the true and real yearly value of as many respective sums of ten pounds a year, computed together, as there are partners (j).*]

Two inhabiting the same house, each paying scot

[XI. *Provided also, That where two persons and no more, not being partners, shall have by the space aforesaid severally in-*

(h) Repealed, 12 & 13 Vict. c. 94, Ch. IX.

s. 2, *ante*, p. 8.

(j) Repealed, 12 & 13 Vict. c. 94,

(i) Compare 12 & 13 Vict. c. 94,

s. 2, *ante*, p. 8.

s. 2, *ante*, p. 8; and see Treatise,

habited in the same house, such two persons, severally paying their scots, and bearing their respective lots as aforesaid, shall have votes at the elections aforesaid, so as such house wherein such two persons inhabit be of the true and real yearly value of twenty pounds or upwards, and that each of the said persons doth pay the yearly rent of ten pounds at the least for his respective part of such house (k).]

and 10l. per annum rent, may vote.

XII. Provided always, That nothing in this act contained shall extend or be construed to extend to oblige any person or persons to pay any scot or bear any lot from the doing of which they are or shall be exempted and discharged by act of parliament, charter, or writ of privilege, but that such person and persons so exempted and discharged shall and may vote at any election of any alderman, common councilman, or other officer usually chosen at the wardmotes of the said city, notwithstanding he or they shall not have borne such lot or paid such scot in such manner as he or they should or might have done in case this act had not been made, and no otherwise (k).]

Persons exempted from scot and lot may vote.

XIII. And to the intent that the citizens and inhabitants of London may have a proper remedy and relief in case they or any of them shall be aggrieved by any tax, rate, or assessment made in or for the said city, or by any misbehaviour of any officer in relation thereto or to the collecting the same, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all and every person and persons who from and after the said first day of June in the year of our Lord one thousand seven hundred and twenty-five, shall be aggrieved by any of the assessments that shall or may be made in or for the said city, towards payment of the rate or tax for the orphans, and also to the rate or tax in lieu of or for keeping *watch and ward in the said city*, or by any breach or neglect of duty committed by any officer concerning the same, to appeal in respect thereof to the mayor and court of aldermen of London; and it shall and may be lawful to and for any such person or persons, in case he or they shall be in anywise aggrieved by any other rate or assessment that shall be made in or for the said city, or any the wards, precincts, parishes, or inhabitants of the same, or by any breach or neglect of duty committed by any officer re-

Complainants about assessments may appeal to the mayor and aldermen,

or to the proper officer,

(k) Repealed, 12 & 13 Vict. c. 94, s. 2, *ante*, p. 8.

whose determination shall be final.

Persons excluded from voting.

Mayor and aldermen to have a negative in passing acts, &c. as also the commons.

lating thereto, to appeal to the proper persons unto whom by law such appeal lies; and the said mayor and court of aldermen, and the said other persons to whom such appeal shall be lawfully made, respectively shall and may hear and finally determine the matter so complained of, and correct and settle the said rates (*l*).

XIV. And it is hereby further enacted, That no person or persons whatsoever shall, from and after the said first day of June one thousand seven hundred and twenty-five, have any right or title to vote at any election [of a citizen or citizens to serve in parliament for the said city, or (*m*)] of any mayor or other officer or officers to be chosen by the liverymen thereof, who have not been upon the livery by the space of twelve calendar months before such election, and who shall not have paid their respective livery fines, or who, having paid the same, shall have received such fines back again in part or in all, or shall have had any allowance in respect thereof; and no person or persons whatsoever shall have any right to vote at any election [of a citizen or citizens to serve in parliament, or (*m*)] of any mayor, [aldermen, or other officer or officers of or for the said city, or any the wards or precincts thereof (*n*),] who have at any time within the space of two years next before such election or elections requested to be and accordingly have been discharged from paying to the rates and taxes to which the citizens of London inhabiting therein are or shall be liable as aforesaid, or any of them, or have, within the time aforesaid, had or received any alms whatsoever, and the vote of every such person shall be void.

[XV. And to the intent that final end may be put to all disputes between the mayor and aldermen and the commons of the common council of the said city touching the making or passing of acts, orders, or ordinances in common council, and that no act, order, or ordinance may for the future be made or passed in common council without the full consent of the representative body of the said city, according to the ancient constitution of the same, be it enacted by the authority aforesaid, That no act, order, or ordinance whatsoever, at any time from and after the said first day of June one thousand seven hundred and twenty-

(*l*) See Treatise, Ch. IX.

(*n*) Repealed, 12 & 13 Vict. c. 94,

(*m*) Repealed, 2 W. 4, c. 45, s. 27. s. 1, ante, p. 7.

five, shall be made or passed in the common council of the said city without the assent of the mayor and aldermen present at such common council, or the major part of them, nor without the assent of the commons present at such common council, or the major part of them (o).]

XVI. Provided always, That nothing in this act contained shall extend or be construed to extend to any election, nomination, or appointment in common council of any common serjeant, town clerk, judges of the sheriffs' court, coroner, common crier, commissioners of sewers, garbler, and the governor and assistants of London of the new plantation of Ulster in Ireland, but that the election, nomination, or appointment of all or any of the said officers shall and may from and after the said first day of June one thousand seven hundred and twenty-five be made by the mayor, aldermen, and commons in common council assembled, or the major part of them, anything in this act contained to the contrary thereof notwithstanding. Exception.

XVII. And to the intent that persons of wealth and ability who exercise the business of merchandize and other laudable employments within the said city may not be discouraged from becoming free of the same by reason of the custom restraining the citizens and freemen thereof from disposing of their personal estates by their last wills and testaments, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all and every person and persons who shall at any time from and after the said first day of June one thousand seven hundred and twenty-five be made or become free of the said city, and also to and for all and every person and persons who are already free of the said city, and on the said first day of June one thousand seven hundred and twenty-five shall be unmarried, and not have issue by any former marriage, to give, devise, will, and dispose of his and their personal estate and estates to such person and persons and to such use and uses as he or they shall think fit, any custom or usage of or in the said city, or any bye law or ordinance made or observed within the same, to the contrary thereof in anywise notwithstanding (p). Freemen made after 1st June, 1725, may dispose of their personal estate as they think fit.

XVIII. Provided nevertheless, That in case any person who shall at any time or times from and after the said first day of Exception.

(o) Repealed, 19 Geo. 1, c. 8, see Treatise, p. 41.

(p) See Treatise, p. 180 *et seq.*

June one thousand seven hundred and twenty-five become free of the said city, and any person or persons who are already free of the said city, and on the said first day of June one thousand seven hundred and twenty-five shall be unmarried, and not have issue by any former marriage, hath agreed or shall agree by any writing under his hand, upon or in consideration of his marriage or otherwise, that his personal estate shall be subject to or be distributed or distributable according to the custom of the city of London, or in case any person so free or becoming free as aforesaid shall die intestate, in every such case the personal estate of such person so making such agreement or so dying intestate shall be subject to and be distributed and distributable according to the custom of the said city, anything herein contained to the contrary in anywise notwithstanding.

Words to be omitted in the oath of a freeman.

[XIX. *And it is hereby further enacted, That there shall, from and after the said first day of June one thousand seven hundred and twenty-five, be omitted and left out of the oath of a freeman of the said city the words following, that is to say, "[ye shall know no foreigner to buy or sell any merchandize with any other foreigner within the city, or the franchise thereof, but ye shall warn the chamberlain thereof, or some minister of the chamber,]" and also these words following, that is to say, "[ye shall implead or sue no freeman out of the city whilst ye may have right and law within the same city],"* and after these words "*[ye shall take no apprentice],"* the words immediately following shall also be omitted, that is to say "*[but if he be freeborn, that is to say, no bondsman's son, nor the child of any alien],"* and for "*[no]*" and instead thereof these words "*[for any]*" shall be inserted in the said oath (p).]

Forfeitures how to be distributed.

XX. And be it further enacted by the authority aforesaid, That all and every the forfeitures hereby enacted or inflicted shall be distributed in manner following; that is to say, one third part thereof to the king's most excellent majesty; one other third part thereof to the chamberlain of the said city, to the use of the mayor, commonalty, and citizens of the said city; and the remaining third part thereof to him or them that will sue for the same within six calendar months next after the same shall be incurred; to be recovered by action of debt, bill, plaint,

(p) See 12 & 13 Vict. c. 94, s. 10, *ante*, p. 17.

or information, in any of his majesty's courts of record at Westminster, wherein no essoign, privilege, protection, or wager of law shall be allowed, nor any more than one imparlance.

XXI. And be it further enacted by the authority aforesaid, **Public act.** That this act shall in all courts and places be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and courts whatsoever, without specially pleading the same.

SINCE these pages were printed, the following Opinion of three of the Law Officers of the Corporation has been communicated to the public, (and the author has of course now seen it for the first time).

It will be observed, that except on the important question as to the source from which the *Occupiers' List* is to be made out, the author is fortunate enough to find his views in a great degree strengthened by those of the able and learned persons whose names are appended to this document: but on the particular question alluded to, the author, with very great respect for the opinion of the Law Officers of the City, feels still compelled to consider his own mode of construing the act the correct one, and he has in a note re-stated his reasons for thus venturing to differ with so authentic a construction.

“ *Monday, Oct. 8.*

“ In compliance with the request of your Committee, we, the undersigned, have considered the late Act of the 12 & 13 Victoria, with a view to its practical working, and for the purpose of its being carried into effect according to its legal import. It is an act to amend the 11 Geo. 1, and reciting the clause of that act relative to the right of election of aldermen and common councilmen, which was thereby declared to belong to freemen, being householders, paying scot and bearing lot, and to none other whatsoever, provided their houses were of the value of £10 a year, and they were the sole occupiers, and had been in possession of a house of such value for twelve months; and also reciting that the right of voting should be extended and enlarged, and that the recited act should be altered and amended.

“ By the first section it is enacted, ‘that so much of the recited act as regulates the right of voting in such elections, and the time at which the polling should commence, and the period

during which it should continue, should be repealed.' The second section *substitutes, in the place of the regulations of the right of voting which had been repealed*, other regulations, which are extended to the election of ward officers, still requiring that the voter must be a freeman, but no longer requiring that such freeman should be a householder, or should pay scot or bear lot, nor that the house of a householder should be of the value of £10 a year, nor that the householder should be the sole occupier or in possession for twelve months, but gives a title to vote to any freeman merely occupying, either solely or jointly, any house, warehouse, counting-house, office, chambers or shop, and rated in his own name at £10 per annum (with a provision as to the joint occupations) 'to the police or any poor rate,' which, as it is an extending and enlarging act, cannot be construed to exclude, but rather to admit, any person who, having the other qualifications, is upon any rate in the city to the required amount. The further requisite is that the person to be entitled to vote must be registered in the Register of Votes for the city of London, described as in use at elections for members of parliament, and then in force, in respect to such premises. This title to vote, given as a substitute for the former, *took effect immediately upon the repeal of the former, which was* when this act received the royal assent, namely, August 1, when the former right ceased and the new right commenced. This, therefore, would be the title to vote to be admitted at every election immediately after the act passed, and to be proved by every elector whose vote was disputed at any such election.

" But the third section, instead of such proof in detail at the time of election, provides a shorter medium of proof to be adopted for the future, and enacts that on the 1st of November in every year the aldermen and common councilmen shall make an alphabetical list of all persons entitled to vote as freemen occupiers under that act, such list to be signed by the aldermen, who then, on the first of November next, will be the persons entitled to vote as freemen occupiers under that act—the freemen occupiers duly rated and registered in the Register of Voters for the city of London, in use at elections for members to serve in parliament, and then in force; not any list, but the register, and only *one* register, for it must be the register in

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force—that is, *on the first of November next* (a), the register which came into force on the 1st of December, 1848, and continues in force till the 1st of December, 1849. The list so made is to be the list of freemen occupiers entitled to vote after the passing of that act, and none can vote after the 1st of November but those on the list. On the fourth section there can be no material doubt. The second section having extended the right of election to occupiers of houses, warehouses, counting-houses, offices, chambers and shops, freed from many of the restraints in the act of 11 Geo. 1, it became necessary to make those who were thus made electors capable of being elected as common councilmen, and, therefore, this clause, in the same words as the second clause, makes all freemen, having the specified qualifications, capable of being common councilmen, notwithstanding any usage or custom to the contrary. These persons are therefore now, for the first time, declared to be capable of being elected common councilmen; but there are no words of disqualification (such as those recited in the preamble from the 11 Geo. 1, and ‘none other whatsoever’), therefore, all who were before qualified continue to be so, with the addition of these new parties. This being only the election of an individual, no previous list was necessary for the purpose of ascertaining the eligibility, but at the election any person might dispute the qualification, and the necessary inquiry as to the

(a) This is one of the most important questions that the act gives rise to, and the author ventures, for the reasons already given, to differ from the law officers of the corporation.

The words “then in force,” in the second section of the act, can, in the author’s opinion, only apply to the time of election, *whenever it may occur*, agreeably to the language of the first part of that section, and has no reference to the 1st November or any other date; see *ante*, p. 8. And inasmuch as the list prescribed by the third section is not positively directed to be made out from the register in force at that date, but on the contrary, is to be the list “of all persons who shall be

entitled to vote as freemen occupiers under this act,” it is incumbent on the ward officers to include in it the names of all persons entitled under section 2, i. e. those qualified “*at every election for alderman, or common councilman, or ward officer*,” whether such election occur in November, when the old register is in force, or St. Thomas’s day, when the new register is in force. For the reasons already given in p. 13, the author thinks the ward officers have no alternative but to include all the names of freemen occupiers on either register, or at all events all those who they are apprised are on either register.

requisites of the fifth clause might be entered upon, and a person establishing the qualification required by that clause, and showing his name on the parliamentary register *then in force* (b), would be eligible at that election.

“ On the sixth section there does not appear to be any material doubt.

“ As to the seventh section, no question is likely to arise after the 1st of November. No questions at present arise on either of the remaining clauses. It is the duty of the beadles of the ward to have their rolls of freemen fully made up according to the annual precept of the Lord Mayor to the wardmotes and the articles for the inquest(c). From the beadles, therefore, should be obtained the list of freemen in the ward. The information necessary to complete the lists of freemen can be obtained from Mr. Sewell, at the Chamberlain's Office(d).

“ HENRY ALWORTH MEREWETHER, Town Clerk.

“ THOMAS SAUNDERS, Comptroller.

“ EDWARD TYRRELL, Remembrancer.”

(b) See *ante*, pp. 10, 14, and note (c) See Treatise, p. 219.
(a), p. 34. (d) See *ante*, p. 12.

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SUMMARY

OF THE

REPORT OF THE COMMISSIONERS FOR INQUIRING INTO THE CORPORATION OF LONDON, 1854.

THE commissioners appointed by the Crown for this important inquiry, commenced their labours in November, 1853, and brought them to a close in the month of April, 1854. They have collected some most valuable evidence on the existing state of the corporation of London and its municipal institutions, and peculiar functions and customs (the minutes of which extend over 875 pages). In the course of this inquiry, the commissioners entered both on the question of the relative position of the city of London proper to the entire metropolis, and of the present state of the municipal government of the city itself.

It must be remembered that throughout the inquiry the commissioners had in view the provisions of the 5 & 6 W. 4. c. 76., by which the municipal corporations of this country are regulated. How far it was possible to adapt the provisions of this Act to the case of the city of London, became naturally a most important branch of the inquiry; and it will be seen that the commissioners have come to the resolution to adapt some of its most important provisions to the case of the corporation of the city of London properly so called; and instead of extending the boundaries of this corporation, as was done in the precedent before them, the commissioners recommend that distinct municipal corporations shall be formed of the adjacent metropolitan boroughs.

a

We find that "the entire metropolis within the limits assigned to it contains an area of 78,029 acres, with 305,933 inhabited houses; that its population was 958,863 in 1801, and 2,362,236 in 1851, having more than doubled in the last fifty years; and that the value of its property assessed to the poor-rate in 1852 was 9,964,348*l*. It appears, further, that the area of the city of London proper is 723 acres; that it contained 14,693 inhabited houses in 1851; that its population was 128,833 in 1801, and 129,128 in 1851; and that its assessment was 953,110*l*. in 1852." (a)

The area of the city proper thus forms an insignificant portion of the surface of the entire metropolis. It is, however, strictly speaking, the only portion possessing any municipal organization; the parliamentary boroughs of Westminster, Marylebone, Finsbury, and Tower Hamlets on the north, and Southwark, Lambeth, and Greenwich on the south of the Thames, being in lieu of a system of municipal government, subject either to the peculiar provisions of local and personal statutes, or the local regulations prescribed by parochial authorities, or government boards.

The Report before us observes, "That portion of the Municipal Corporations Act, which consists in an extension of the boundaries of the borough, so as to comprehend all portions of the town and its suburbs lying beyond the old limits, seems to us inapplicable to the case of the metropolis. If the procedure of the Legislature in the Municipal Corporations Acts were taken as a precedent, absolutely and without discrimination, in reforming the London corporation, it would be necessary, not only to alter its constitution, but to advance the present boundaries of the city until they surrounded the entire metropolis; a process by which an area of 723 acres would be converted into an area of 78,029 acres, by which a population of 129,128 would be converted into a population of

(a) Report, p. 12.

2,362,236, and an assessment of 953,110*l.* would be converted into an assessment of 9,964,348*l.* A change of this magnitude would not only alter the whole character of the city corporation, but it would, as it seems to us, defeat the main purpose of municipal institutions.”(a)

To reduce the multifarious laws, customs, and regulations which at present form the materials of the municipal government of the city of London, the commissioners recommend:—

“1. That a new charter be issued, containing all such provisions in existing charters of the corporation of London, and all such customs of the city, as it may be deemed expedient to preserve.”(b)

On the absence of a governing charter for the corporation of London at the present time, the uncertainty as to the legal operation of the existing charters and customs of the city, and the conflict between the customary laws of the city and the general law of the land, much stress is laid in this Report. “The customs of the city,” say the commissioners, “having been solemnly confirmed by Act of Parliament, have themselves the force of an Act of Parliament; and we have been told in evidence, by witnesses peculiarly conversant with the subject, that the highest legal authorities are divided as to the effect of general Acts of Parliament within the city, when they conflict with the city customs, and do not repeal them by express enactment.”(c)

In the minutes of evidence quoted by the commissioners will be found some most remarkable instances of the conflict of the ancient laws of the city of London with the general law of the land, affecting not only the conduct of trade and the local government of the city, but the administration of civil and criminal justice. These evils are very greatly increased by the practice of the Legislature

(a) Report, p. 13.

(b) Ibid. 37.

(c) Ibid. p. 15. referring to Minutes of Evidence, 859. 1895. 1900.,

by the author of this work; 5338—5343, by Mr. Serjt. Merewether; and this work itself, p. 3.

passing such a number of local and personal Acts at the prayer of the corporation authorities — an abuse which has grown up of late years so as to become a very serious inconvenience. (a)

The commissioners' second recommendation is in accordance with the Municipal Corporations Act: —

"2. That the lord mayor be elected by the common council, from the common councillors, or from persons qualified to be common councillors."

At present the chief magistrate of the city is elected by the livery, a numerous body of freemen, many of whom are non-resident, and in a great degree unconnected with the city. The livery in *common hall*, in fact, elect two of the aldermen who have filled the office of sheriff, and from these two the court of aldermen select one. (b)

It is recommended,

"3. That the aldermen be elected by the burgesses of the wards for six years, and be re-eligible; that they be justices of the peace during their term of office."

The aldermen of the city of London, it will be seen, are at present elected for life. (c) The commissioners do not follow the precedent of the Municipal Corporations Act, but propose to preserve the direct connection of the aldermen with their wards, which is stated to be productive of considerable advantages. (d)

With regard to the subject of stipendiary magistrates it is recommended,

"4. That the powers of the Municipal Corporations Act, with respect to the appointment of stipendiary magistrates, be extended to the corporation of London."

The 5 & 6 Will. IV. c. 76. s. 99. enables the town councils of boroughs to make a bye-law, on which the crown may appoint salaried justices. The corporation fix the salaries,

(a) In addition to the instances cited in evidence before the commissioners, others have been collected by the author in a pamphlet published in the present year, en-

titled, "The City of London Corporation Enquiry."

(b) See *ante*, p. 85.

(c) See *ante*, p. 26.

(d) Report, p. 18.

and the number of magistrates required. Great stress has been laid by the advocates of the system, now prevailing in the city of London, on the importance of the ancient city privilege of electing their own magistrates;—comparisons, also, not very flattering to stipendiary magistrates, have also been made between the mode of administering justice by those gentlemen and the practice of the aldermen of the city of London. It is not proposed here to enter on this somewhat invidious discussion. It is sufficient to say, that the objections made to the system of *stipendiary* magistrates apply also to the judges of the land, who are all stipendiary, and most of them equally removeable with magistrates appointed by the crown. It should be remembered, moreover, that with the exception of the city of London proper there are already stipendiary magistrates appointed throughout the metropolis, and not even a plausible reason has been urged why a different system should be adopted within the limits of the city of London from that which has been already established in the other seven districts of the metropolis.

By the 5th suggestion it is recommended,

“That the court of aldermen be abolished, and that its functions be transferred to the common council.” (a)

By the present constitution of the corporation of London the court of aldermen constitutes a distinct branch of the municipal government. The control it claims to exercise over the proceedings of the common council, and its powers over the funds of the corporation, will be found treated of in the proper place in this work. (b)

It is, moreover, proposed,

“6. That the number of wards be reduced to some number not less than twelve, nor greater than sixteen; and that their area and population be, as far as possible, made equal.

“7. That each ward return one alderman and five common councilmen to the common council; and that their

(a) Report, p. 37.

(b) See *antè*, p. 27.

qualification be that prescribed by the Municipal Corporations Act for the larger class of boroughs: namely, the possession of real or personal estate of 1000*l.*, or being rated on an annual value of at least 30*l.*

"8. That the voters in the wardmote elections be the occupiers of premises in the ward rated to the amount of 10*l.* per annum, without any additional qualification." (*a*)

The inequality of the wards of the city of London, both in area and population, has long been the subject of remark. The number of the common council was, in 1840, fixed at 206; but, with the exception of the regulation then made, no alteration has been made in the system of election by wards for many centuries. (*b*)

It is proposed,

"9. That the elections in common hall be abolished.

"10. That the sheriffs be elected by the common council."

The common hall elections are those in which the livery have the elective franchise. (*c*) At these elections the lord mayor, chamberlain, sheriffs, bridgemaster, ale-conners are chosen; and, from the evidence before the commissioners, it would seem that very great abuses exist in the mode of election. There are, it appears, upwards of twelve thousand electors, the majority of whom do not vote; and the consequence is, that a comparatively small number of corrupt voters are able to carry an election. (*d*)

A very useful reform is recommended with regard to the local courts of law.

"11. That the lord mayor's court and the sheriff's court be consolidated, and that an appeal be given from such court to one of the superior courts at Westminster.

"12. That the court of hustings be abolished.

"13. That the court at St. Martin's-le-Grand be abolished."

(*a*) Report, p. 37.

(*b*) See on this subject, *ante*, p. 27.

(*c*) See *ante*, p. 83.

(*d*) See on this evidence before the commissioners, §. 4634—59, 5837—48.

The nature and jurisdiction of the various city local courts will be found described in their proper place. (a) The abolition of the court of hustings, and the court of St. Martin's-le-Grand is, doubtless, a desirable reform. There remain, however, it will be seen, a great variety of customary jurisdictions, which seem, for the most part, fostered only to entrap the unwary. The new consolidated court may, perhaps, like the *Passage* court, at Liverpool, turn out a very useful tribunal. Since the opening of the practice of the lord mayor's court generally to the profession (b) its jurisdiction has greatly increased.

As, in the precedent of the Municipal Corporations Act (b), it is recommended,

"14. That all regulations prohibiting persons not free of the city from carrying on any trade, or using any handicraft within the city, be abolished. (c)

"15. That the metage of grain, fruit, and other measurable goods be no longer compulsory.

"16. That the fellowship of porters be dissolved, and that other privileges of porters be abolished.

"17. That the admission of brokers by the court of aldermen be abolished.

"18. That the street toll on carts not the property of freemen be abolished."

The general nature of the present trade restrictions in the city of London will be found discussed in the 22nd chapter of this work. (d) The question was raised some ten years ago, whether the right to exclude nonfreemen from trading extended only to retail dealers. This question was much discussed in an action of *Brown v. Strutt*, in the mayor's court, in 1846, but was put an end to by the recorder deciding against the chamberlain.

The city right to the metage of corn, &c., is treated of in the same chapter (a), and has been in litigation for many

(a) See *ante*, ch. 13.

(b) As to the litigation on this subject, see *Reg. v. Mayor of London*, 13 Queen's Bench Reports, p. 1.

(c) 5 & 6 W. IV. c. 76. s. 14.

(d) Report, p. 37.

(e) See *ante*, p. 396.

(f) *Ibid.*

years, in a dispute between the corporation and Messrs. Combe, Delafield, and Co., the brewers. The porters' privileges, on which much litigation has also arisen with the city, will be found in chapter 33. (a) The system of regulating city brokers by the Court of Aldermen will be found treated of in chapter 23. of this work. (b) The abolition of street tolls will be an unqualified improvement.

The commissioners recommend,

"19. That the city police be incorporated with the metropolitan police."

The abolition of the distinction between city and metropolitan policemen it was hardly possible could be long delayed. It is of the very first importance, to secure efficiency in a police system, that the whole of the force should act in unison. The city of London, which constitutes so small a part of the entire metropolis, could only keep up a distinct police force, at the cost of the efficiency of the whole body. The old system of police within the city, and the existing regulations of the city police, are treated of in chapter 12. of the present volume.

With regard to the regulations of the Thames, it is proposed,

"20. That the conservancy of the river Thames be transferred to a board consisting of the Lord Mayor, the First Lord of the Admiralty, the President of the Board of Trade, the Deputy-Master of the Trinity House, and the First Commissioners of Woods."

The existing laws and regulations with regard to the conservancy of the Thames and the port of London, occupy the 19th chapter of this work. (c) The question of the extent of the rights of the corporation with regard to the river Thames, has been long the subject of litigation, and forms the subject of controversy in a suit still pending between the crown and the corporation. (d)

(a) See p. 501.

(b) See p. 416.

(c) See p. 320.

(d) See *Attorney-General v. Corporation of London*. 12 Beavan, 8, & 171.

Another recommendation is,

“ 21. That the exclusive privileges of the company of watermen and lightermen on the river Thames be abolished.”

The laws as to the lightermen and watermen of the Thames, are treated of in the 20th chapter of this work, where it will be seen, that regulations for the government of the watermen on the Thames have existed from a very early period. (a) The commissioners recommend as a substitute for the existing regulations, some protection to the public against unskilful or unfit persons plying for hire on the river, and that the issue of licences for this purpose ought to be vested in some competent authority. (b)

Extensive reforms are recommended in the financial affairs of the corporation.

“ 22. That the accounts of the revenue and expenditure of the corporation be consolidated.

“ 23. That the money and securities of the corporation be lodged in the Bank of England.

“ 24. That the election of auditors be amended.

“ 25. That the provisions of the Municipal Corporations Acts, with respect to the mortgaging of lands, and the making of an annual return of revenue and expenditure to the Secretary of State, be extended to the corporation of London.

“ 26. That the Irish Society be dissolved; that its trusts be declared by act of parliament; and that new trustees be appointed by the Lord Chancellor of Ireland.”

A distinct chapter of the present work is devoted to the legal branch of the subject of the property and revenues of the corporation of London. The evidence given before the commissioners has thrown much light on these matters. The Report contains (c) what, perhaps, may be deemed a correct view of the revenue and expenditure of the corporation of London for the year 1852, making a gross total of income of 551,971*l.* 5*s.* 4*d.* With

(a) *Ante*, p. 348.

(b) Report, p. 27.

(c) P. 27.

regard to the great bulk of this large income, the corporation not only are mere trustees, but separate accounts are kept for the purpose of public works, but no one can look at these accounts without being struck with the very heavy sum which the civic authorities have placed at their absolute disposal. The commissioners observe, that "an unnecessary complexity in the keeping of the city accounts, and in the administration of its affairs, is produced by the multiplication of departments and separate funds;" and, therefore, recommend a consolidation of the departments, a reduction of the number of officers, and a better system of auditing the accounts in accordance with the Municipal Corporation Act. (a)

In accordance with the plan already adverted to, the commissioners recommend,

"27. That the external boundaries of the city remain unchanged; but that the municipal connection between the corporation of London and a part of the borough of Southwark be abolished.

And

"28. That the rest of the metropolis be divided into districts for municipal purposes.

"29. That in the event of such division being made, a Metropolitan Board of Works be created, composed of members deputed to it from the council of each metropolitan municipal body, including the common council of the city.

"30. That the coal duties now collected by the corporation of London, so long as they remain in force, be under the administration of this board; and that, in case the coal duties which expire in 1862 should not be renewed, the 4*d.* duty now levied on behalf of the city should cease at the same time.

"31. That this board be empowered to levy a rate, limited to a fixed poundage, for public works of general metropolitan utility, over the metropolitan district."

The concluding part of the commissioners' Report (b)

(a) See 5 & 6 Will. IV. c. 76. ss. 37. 93.

(b) P. 38.

must be gratifying to those members of the corporation of London who have taken an active part in the management of its affairs, inasmuch as it dispels any imputation on those gentlemen of corrupt motives in the discharge of their trust, the commissioners having "discovered nothing which can affect injuriously the honour and integrity of the officers to whom the affairs of this great corporation have been confided." "Some of the alterations," say the commissioners, "which we have recommended, will reduce the income of the corporation; but others will, at the same time, relieve its burdens and diminish its expenditure. Again, some of the reforms which we have suggested, will curtail its powers and privileges, but they will, at the same time, remove mischievous restraints upon trade and industry, and will abolish other institutions unsuited to our modern legislation. We trust that the changes in the constitution of the corporation which we have indicated, and which are founded upon the recognized policy of the country with respect to municipal boroughs, will place it on a more solid and enlarged basis; and that the corporation will continue, under an amended system, to possess abundant means, not only for purposes of public usefulness, but, also, for the exercise of a decent hospitality and splendour. We may be permitted to add that, while we have abstained from recommending an extension of the boundaries of the city, by which it would include the entire metropolis, we have proposed such an arrangement as will enable the corporation to form a part of a general metropolitan system."

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